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FILE COPY

OCTOBER TERM, 1907

No. [REDACTED] 13 Original

STATE OF CALIFORNIA,

Complainant

vs.

MURRAY W. LATIMER, JAMES A. DAILEY and LEE M. EDDY, individually and as members of the Railroad Retirement Board, and GUY T. HILL, VERBING, individually and as Agents of Internal Revenue,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

BILL OF COMPLAINT

THE STATE OF CALIFORNIA,

By [REDACTED]

Attorney for Complainant

THE STATE OF CALIFORNIA,

By [REDACTED]

Attorney for Defendants

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In the Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1937

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STATE OF CALIFORNIA,

Complainant,

vs.

MURRAY W. LATIMER, JAMES A.
DAILEY and LEE M. EDDY, individ-
ually and as members of the Railroad
Retirement Board, and GUY T. HEL-
VERING, individually and as Commis-
sioner of Internal Revenue,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

Now comes the complainant, the State of California, by its Attorney General, U. S. Webb, and presents herewith its Bill of Complaint in the above entitled cause and respectfully moves this Court

for leave to file the same in this Court under its original jurisdiction.

STATE OF CALIFORNIA,

By U. S. WEBB,

Attorney General,

H. H. LINNEY,

Deputy Attorney General,

LUCAS E. KILKENNY,

Deputy Attorney General,

JAMES J. ARDITTO,

Deputy Attorney General,

Attorneys for Complainant.

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Retirement Board, and GUY T. HEL-
VERING, individually and as Commis-
sioner of Internal Revenue,

Defendants.

NOTICE OF HEARING

Please take notice that on the 4th day of April, 1938, or as soon thereafter as counsel can be heard, the motion of complainant for leave to file its bill of complaint in the above entitled cause will be

submitted to the Supreme Court of the United States.

STATE OF CALIFORNIA,
By U. S. WEBB,
Attorney General,

H. H. LINNEY,
Deputy Attorney General,

LUCAS E. KILKENNY,
Deputy Attorney General,

JAMES J. ARDITTO,
Deputy Attorney General,
Attorneys for Complainant.

PROOF OF SERVICE

We hereby acknowledge receipt of ~~copy~~ of motion for leave to file bill of complaint, bill of complaint, brief ~~and~~ notice of hearing this ----- day of April, 1938.

Attorneys for Defendants.

In the Supreme Court

OF THE
UNITED STATES

OCTOBER TERM, 1937

No. _____ Original

STATE OF CALIFORNIA,
Complainant,

vs.

MURRAY W. LATIMER, JAMES A.
DAILEY and LEE M. EDDY, individ-
ually and as members of the Railroad
Retirement Board, and GUY T. HEL-
VERING, individually and as Commis-
sioner of Internal Revenue,
Defendants.

BRIEF ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

As cause for this motion it is respectfully shown:

1. That this cause involves a controversy be-
tween the State of California and citizens of other
states.

2. That the State of California is the real party in interest as complainant.

3. That it is not a suit to enforce a penalty under the state law and the nature of the controversy does not call for a judgment on a political or governmental question.

4. That no service of process can be had within the State of California upon any of the defendants.

5. That this cause is of a justiciable character, of a civil nature, is within the judicial power of the United States, is instituted to redress a wrong and save the State of California from irreparable injury as a sovereign state, and to save its duly constituted state officers from irreparable injury resulting from certain threatened acts on the part of defendants which are in conflict with the rights of the State of California under the Constitution of the United States.

6. That this is an action arising from extraordinary and exceptional circumstances in which the State of California and its officers and employees would be without adequate relief except by invoking the original jurisdiction of this Court in equity as set forth in complainant's bill of complaint.

7. Equity jurisdiction rests upon the claim that to apply to the State of California the provisions of the Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937 or the Carriers' Taxing Act of 1937 would be unconstitutional and

would irreparably injure said state in its property rights and in the exercise of its governmental and sovereign powers as a state, and would give rise to a multiplicity of suits as more particularly set forth in Paragraph XI of said Bill of Complaint.

8. That this is not an action against the United States but is an action to enjoin defendants from committing acts under color of office which are neither authorized by the statutes of the United States nor by its Constitution.

Ohio vs. Helvering, 292 U. S. 360;

Hill vs. Wallace, 259 U. S. 44;

Philadelphia Co. vs. Stimson, 223 U. S. 605;

Pennoyer vs. McConnaughy, 140 U. S. 1.

Wherefore, complainant prays that this honorable court may exercise its original jurisdiction in this controversy as provided in Article III, section 2, clause 2 of the Constitution of the United States.

STATE OF CALIFORNIA,

By U. S. WEBB,

Attorney General of the
State of California,

H. H. LINNEY,

Deputy Attorney General,

LUCAS E. KILKENNY,

Deputy Attorney General,

JAMES J. ARDITTO,

Deputy Attorney General,

Attorneys for Complainant.

In the Supreme Court

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VERING, individually and as Commis-
sioner of Internal Revenue,

Defendants.

BILL OF COMPLAINT

*To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of the United
States:*

The bill of complaint of the State of California
respectfully shows this Honorable Court that:

I

The State of California is one of the states of the United States of America, and this suit is brought on its behalf pursuant to the written request made on the Attorney General of the State of California by the Board of State Harbor Commissioners for San Francisco Harbor, a duly constituted agency of the State Government; and U. S. Webb is the duly elected, qualified and acting Attorney General of the State of California.

II

Defendants Murray W. Latimer, James A. Dailey and Lee M. Eddy are the duly appointed, qualified and acting members of and constitute the Railroad Retirement Board, an independent agency in the executive branch of the Government of the United States, having its principal office in the District of Columbia, and each of said persons is sued herein individually and as a member of said Board; said defendant Murray W. Latimer is a citizen of the State of New York; that said defendant James A. Dailey is a citizen of the State of New York; that said defendant Lee M. Eddy is a citizen of the State of Missouri.

Defendant Guy T. Helvering is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, and has his official residence and is to be found in the District of Columbia, and is a citizen of the State of Kansas.

III

This suit is brought in the Supreme Court of the United States in the exercise of the original jurisdiction of said Court, on the ground that it is a suit in equity relating to a controversy between a state and citizens of other states of the United States.

IV

The State Belt Railroad is owned by complainant and is located on the waterfront of the City and County of San Francisco, State of California, upon real property owned by complainant. The said State Belt Railroad is located wholly within the City and County of San Francisco in the State of California and extends practically the full length of the Embarcadero and Jefferson Street to the Presidio of San Francisco, a United States Military Reservation, a distance of approximately five miles. It has a physical connection with the tracks of the Southern Pacific Company near the Embarcadero and Townsend Street, San Francisco. Its tracks also run onto forty-five wharves owned by the State of California and used by freight car ferries of the Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, the Northwestern Pacific Railway Company, and The Western Pacific Railway Company, all common carriers engaged in interstate commerce by railroad, and connect with certain freight yards of the four inter-

state carriers mentioned, in which all switching is done by the said State Belt Railroad. These yards are owned by the State of California and by agreement are used by the interstate carriers mentioned. On the forty-five wharves owned by the State of California freight is loaded onto steamers from cars hauled by the State Belt Railroad and is unloaded from steamers onto cars hauled by said State Belt Railroad. In addition, said State Belt Railroad serves about one hundred and seventy-five industries located along its line, and with which it has connections. Said State Belt Railroad also moves carload freight and empty cars for loading from and onto the Southern Pacific transfer tracks, such movements being for the limited purpose only of interchanging cars, these transfer tracks being for the use of shippers or consignees who do not have industrial or private tracks of their own, and are owned and operated by the Southern Pacific Company, but by agreement the State Belt Railroad has trackage rights over them for the limited purpose of interchanging cars, as above stated.

None of the tracks of the State Belt Railroad is ever used by any of the other carrier roads except for the limited purpose of interchanging cars, and no locomotives except those of the State Belt Railroad ever move over any part thereof, and the State of California owns no cars.

The State Belt Railroad is not an incorporated company or agency of the State of California. Its name was adopted by the Board of State Harbor Commissioners for San Francisco Harbor merely to designate it as one of the many diversified governmental instrumentalities of said board used in connection with the exercise of said board's powers.

Said State Belt Railroad is operated by the State of California for the purpose of facilitating the commerce of the port of San Francisco without any profit being derived therefrom. The charges made for services rendered by it are fixed by said board pursuant to the authority conferred upon it by sections 1690 to 3231, inclusive, of Part I, Division VI, of the Harbors and Navigation Code of the State of California, attached hereto, marked Exhibit "C," and made a part hereof.

The operation of said State Belt Railroad is considered necessary by the State of California in the interest of and for the benefit of its people in the promotion and facilitation of commerce through the port of San Francisco and is operated solely for that purpose.

Said State Belt Railroad has been in operation for about forty-five years under the immediate supervision of various superintendents. Said superintendents are appointed by said Board of State Harbor Commissioners and are under its general supervision and control and hold office at the pleasure of said board. All persons employed

in the operation of said State Belt Railroad are officers and employees of the State of California. All of said employees are selected and appointed under a merit system provided for by Article XXIV of the Constitution of said state and by the State Civil Service Act (Cal. Statutes 1937, page 2085), and after a period of probation have permanency of tenure and are removable only for cause, as provided by said act.

Said State Belt Railroad is an essential and indispensable facility of the San Francisco Harbor, administered by the State of California by and through the Board of State Harbor Commissioners for San Francisco Harbor, and said state in the construction, maintenance, operation, management and control of said State Belt Railroad is engaged in a usual, traditional and essential governmental function.

V

The said State Belt Railroad hereinabove referred to and described in Paragraph IV of this complaint is operated by and through the Board of State Harbor Commissioners for San Francisco Harbor, composed of three commissioners appointed by the Governor of the State of California by and with the consent of the senate of said state, and holding office at the pleasure of the Governor. Said board has jurisdiction, control and administration of the waterfront property upon which said State Belt Railroad is located, and

operates said railroad as one of the facilities of San Francisco Harbor.

Said Board of State Harbor Commissioners for San Francisco Harbor is, and said board and its predecessors have been since about the year 1863, an agency of said State of California created by law and vested by law with jurisdiction and control over said waterfront property and over that portion of the Bay of San Francisco within an area defined by law and lying generally along the easterly and northerly harbor lines of the City and County of San Francisco, and the improvements, rights, privileges, easements, and appurtenances connected therewith, said jurisdiction and control being for the purpose of maintaining and developing the San Francisco Harbor and maintaining, developing and operating the harbor and terminal facilities thereof, including the State Belt Railroad.

Said Board of State Harbor Commissioners for San Francisco Harbor has the duties and powers set forth and prescribed by the Statutes of the State of California which are codified in sections 1690 to 3231, inclusive, of Part I, Division VI, of the Harbors and Navigation Code of the State of California, hereinabove referred to and marked Exhibit "C."

All of the powers and duties of said Board of State Harbor Commissioners for San Francisco Harbor, including its powers and duties relating to the construction, maintenance and operation of the

State Belt Railroad, are essentially governmental in character and such as are usually and traditionally a part of government functioning, and are directed to the general welfare of the people of the State of California in that only through the instrumentality of such state agency can the San Francisco Harbor be prepared, organized, maintained, developed and operated, and the commerce of the Port of San Francisco with all parts of the world and with the inland rivers and valleys of the State of California promoted for the best interest and general welfare of the people of the State of California.

VI

All of said employees of said State Belt Railroad now are, and prior to and ever since the enactment of the Railroad Retirement Act of 1935 hereinafter more particularly referred to many of said employees were members of the State Employees' Retirement System of the State of California, created and existing under the terms of the State Employees' Retirement Law (California Statutes 1931, page 1442, as amended), hereto attached and marked "Exhibit D" and made a part hereof.

Said act provides for a pension system for state employees of the State of California; makes officers and employees of the state, with certain exceptions not pertinent herein, members of said system; provides for monthly deductions, at specified rates, from the compensation of such members, and for

the payment of such deductions into the "state employees' retirement fund," created by said act. Said act also provides for the payment into the "state employees' retirement fund" from the state funds from which members are compensated, including the San Francisco Harbor Improvement Fund, of 3.75 per cent of the total compensation of members of the system who are paid from such funds. All such moneys paid into the "state employees' retirement fund" are, under the provisions of said act, used for the payment of service retirement allowances, disability retirement allowances, and death benefits to members of the system, who become eligible therefor.

Sections 29 and 38b of said act, considered together, provide that persons who are members of any retirement or pension system supported wholly or in part by funds of the United States Government and who are receiving credit in such other system for service shall not be members of said state retirement system of California, it being the purpose of these sections to prevent any person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds.

Under the provisions of section 38b and section 75 of the act any member of the state retirement system, who on account of his employment by the state is required to become a member of a retirement system supported wholly or in part by funds of the

United States, is entitled to the repayment to him of his contributions to the state employee's retirement fund.

VII

That the Railroad Retirement Act of 1935 (Act of Congress of August 29, 1935, Chapter 812, 49 Stat. 967, 45 U. S. Code, Secs. 215-228), hereinafter referred to as the Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937 (Act of Congress of June 24, 1937, Chapter 382, 50 Stat. 307, 45 U. S. Code, Secs. 228a-228r), hereinafter referred to as the Railroad Retirement Act of 1937, and the Carriers' Taxing Act of 1937 (Act of Congress of June 29, 1937, Chapter 405, 50 Stat. 435, 45 U. S. Code, Secs. 261-273), hereinafter referred to as the Carriers' Taxing Act of 1937, each, by their terms, purport to apply to all carriers, subject to Part I of the Interstate Commerce Act, which operate any equipment or facility or perform any service in connection with transportation by railroad.

The purpose and effect of the Railroad Retirement Act of 1935 and of the Railroad Retirement Act of 1937 is to disburse funds of the Government of the United States to "employees," as defined in said acts, eligible for "annuities" under said acts, and who conform to all the provisions of said acts relating to application and qualification therefor.

The purpose and effect of the Carriers' Taxing Act of 1937 is to furnish from the proceeds of an

income tax on the compensation of "employees," and from an income tax on the compensation of "employee representatives," and from an excise tax on "employers," sufficient funds wherewith to pay the "annuities" provided for by the Railroad Retirement Act of 1935, and by the Railroad Retirement Act of 1937.

On the face of the Railroad Retirement Act of 1935 and the Railroad Retirement Act of 1937 and the Carriers' Taxing Act of 1937, each of said acts is related to each of the other acts textually; in field of operation and application; by their respective relation of burdens and benefits to the same classes, bases, and measures; by provisions which are baseless and inexplicable on the face of each act standing alone, and explainable only by corresponding provisions of each of the other acts; by their respective references to amendments of the Social Security Act; and by their combined substantial identity with the unconstitutional Railroad Retirement Act of 1934; all of which is confirmed by their legislative history. Said acts are the coordinated, complementary and interdependent parts of, and together they constitute, under the separate exercise of the taxing power and of the power of appropriation, a single legislative scheme to establish a railroad pension system under which carriers are compelled to contribute large sums of money, and a group of persons consisting of all present and future carrier employees and certain

others are compelled to contribute substantial amounts, whether they so desire or not, for the procurement of "annuities" as provided in said Railroad Retirement Acts. The pension system so provided for will not be effective unless all of such acts are enforced.

If said acts are applied to the State Belt Railroad, the State of California, as owner of said railroad, will be compelled to pay out of the treasury of said state to the internal revenue officers of the United States approximately \$7,862.32 yearly, as and for an income tax on the employees of said railroad, which said state will be obliged to collect from said employees, and an excise tax upon the State of California in the amount of \$7,862.32 yearly.

If said acts are so applied, the employees of said State Belt Railroad who were such employees on the enactment date of the Railroad Retirement Act of 1937, or who became or shall become such employees after said date, will become eligible for annuities, as provided in said act, after they have ceased to render compensated service (except as otherwise provided in said act) to any person whether or not an employer as defined in section 1a of said act, and death benefits will be paid with respect to the death of individuals who are such employees after December 1, 1936, and all such employees will cease to be members of the State Employees' Retirement System of California by

reason of the provisions of section 38b of the State Employees' Retirement Law (1931 Cal. Stats., page 1442, as amended), hereinabove in Article VI of this bill of complaint referred to.

VIII

The Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937, and the Carriers' Taxing Act of 1937, on account of their interrelationship and substantial singleness of purpose, constitute one legislative enactment having for its sole purpose the establishment and operation of a pension system and the provision of funds to supply "annuities" and disability and death benefits to the members of such system. No part of this legislative enactment can be operative as to complainant without imposing upon complainant the taxes provided for in the Carriers' Taxing Act of 1937. Such taxes can not be imposed upon complainant, State of California, or upon the State Belt Railroad without violating the fundamental implied constitutional doctrine of the reciprocal immunity from taxation of the governmental functions, agencies and instrumentalities of the states and the United States, respectively. To pay the taxes so unlawfully demanded by defendant Guy T. Helvering would be a burden on and an interference with the sovereign independence of complainant in its governmental capacity. In attempting to collect any of such taxes from complainant or to enforce against complainant

the Carriers' Taxing Act of 1937 or the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937; which said railroad retirement acts are so connected and related to the first named act by text, interdependence, reference, and singleness of purpose as to constitute with it a single legislative enactment, the defendants and any persons acting under them would be acting illegally and unconstitutionally and outside the scope of their official authority. Any such action would be the illegal and unconstitutional action of the defendants individually and would be without the authority of the United States, and would not be an action of the United States.

IX

As hereinafter more particularly set out, defendants Murray W. Latimer, James A. Dailey and Lee M. Eddy, purporting to act as members of the Railroad Retirement Board, hereinbefore referred to in Paragraph II hereof, have notified complainant in writing that the Railroad Retirement Act of 1935 and the Railroad Retirement Act of 1937 apply to the said State Belt Railroad and to its owner and operator, State of California, complainant herein; that a copy of said notice is attached hereto, marked Exhibit "A," and made a part hereof.

That defendants Murray W. Latimer, James A. Dailey and Lee M. Eddy, purporting to act as members of the Railroad Retirement Board, have threatened to and unless enjoined by this Court will re-

quire the complainant through its duly constituted agent, the Board of State Harbor Commissioners for San Francisco Harbor, to gather and keep records of the employees of complainant on said State Belt Railroad and will enforce against the complainant, its officers, agents, and employees certain penalties if it refuses to gather and keep such records.

X

Defendant Guy T. Helvering, purporting to act as Commissioner of Internal Revenue, has notified complainant in writing that the Carriers' Taxing Act of 1937 applies to said State Belt Railroad and to its owner and operator, the State of California, complainant herein; that a copy of said writing is attached hereto, marked Exhibit "B," and made a part hereof.

Defendant Guy T. Helvering, purporting to act as Commissioner of Internal Revenue, has threatened to and unless enjoined by this Court will enforce collections of alleged taxes pursuant to the Carriers' Taxing Act of 1937 from complainant State of California, as owner of the State Belt Railroad; said defendant also will enforce against the complainant, its agents, and employees certain penalties for nonpayment of said taxes alleged to be due.

Said defendant Guy T. Helvering, purporting to act as Commissioner of Internal Revenue, has threatened to and unless enjoined by this Court

will force the complainant to deduct from the compensation of its employees the income tax claimed by said defendant to be levied upon the income of said employees, at the rates prescribed by the Carriers' Taxing Act of 1937, and will enforce against complainant, its officers, agents, and employees certain penalties for the failure to make such deductions.

XI

As grounds for the exercise of original jurisdiction in equity in this Court and for the equitable relief herein sought complainant avers:

The threatened attempt of defendant Guy T. Helvering, purporting to act as Commissioner of Internal Revenue, to collect the taxes unlawfully demanded by him from the State of California would, if complainant should refuse to pay the taxes unlawfully sought to be imposed upon it or to deduct or pay over the tax unlawfully levied upon the income of its said employees, subject complainant and its officers and employees to heavy penalties, as follows: (a) For wilful failure to pay the tax or to keep any records or supply information, complainant would be subject to prosecution for commission of a misdemeanor and the imposition of a fine of \$10,000. (Sec. 7(c) Carriers' Taxing Act of 1937 and Revenue Act of 1926, Secs. 600, 800, and 1114a); (b) For wilful failure to deduct and pay over the income tax im-

posed on the compensation of employees, complainant would be subject to prosecution for commission of a felony and the imposition of a maximum fine of \$10,000. (Sec. 3a, Sec. 7c Carriers' Taxing Act of 1937 and Revenue Act of 1926, Secs. 600, 800, and 1114b); (c) For failure to pay the alleged tax when due there would be added to any tax imposed by the Carriers' Taxing Act of 1937 interest at the rate of 7 per cent per annum on the amount of said tax (Sec. 7b, Carriers' Taxing Act of 1937); (d) Complainant and its officers would also be liable to indictment, fine and imprisonment under federal conspiracy statutes.

Complainant and its officers can avoid these penalties only by paying the taxes unlawfully sought to be imposed upon complainant and upon the income of its employees and suffering irreparable damage hereafter shown unless this court of equity takes jurisdiction and grants injunction against collection of such taxes.

If complainant is forced to make payment under said act of such taxes for any of the periods fixed by regulations prepared and issued by said defendant, governing the manner and conditions of making returns of taxes and payment and collection of taxes under the Carriers' Taxing Act of 1937, or at any time after the termination of such periods (first period ended September 30, 1937), the only remedy available to complainant will be,

immediately after payment, to file with the Commissioner of Internal Revenue a formal claim for refund. Complainant can file no suit on such claim until the commissioner acts thereon, unless the commissioner fails to act within six months (Sec. 3226 R. S. as amended by Section 1103, Revenue Act 1932).

The early determination of the applicability of the said acts to complainant and to its employees will be for the benefit of all parties in interest, including not only complainant but also the United States. Such determination will disclose to defendants whether they are proceeding under authority of law, and will protect complainant from irreparable damage. Such determination will prevent large disbursements of funds derived from the Carriers' Taxing Act of 1937, which will be repayable to complainant but not recoverable by the government, in case said acts are later determined by the courts to have no application to complainant or its employees, and will also, in case said acts are later determined to have no application to complainant or its employees, prevent irreparable loss to complainant resulting from multiplicity of claims and suits by the employees of said State Belt Railroad to establish their rights to civil service status under the laws of the State of California, and their rights and privileges under the State Employees' Retirement System of said state, which rights and privileges will have been

surrendered by them in reliance upon the Railroad Retirement Act of 1937.

The Carriers' Taxing Act of 1937, if applied to complainant, will impose upon complainant as an "employer" a very heavy tax with respect to having individuals in its employ, to wit: an amount of \$7,862.32 per year. This amount, if imposed and collected, must be supplied from charges collected by complainant in the administration of San Francisco Harbor, an essential, usual and traditional governmental function. The charges necessary to supply such amount would be in addition to those now imposed by the Board of State Harbor Commissioners for San Francisco Harbor. Such charges would be a burden upon the commerce of said harbor. In order to make such charges the tariffs of said board would have to be revised and the uncertainty of the legality of such increased charges would work great harm to complainant and to the public. The interests of all concerned demand a speedy determination of the applicability of said acts to complainant and incidentally to its employees, and the fact that a remedy at law will delay such determination for a much longer time makes that remedy inadequate and gives equity jurisdiction.

The remedy at law afforded by quarterly payment of taxes, claims for refund, and suits by complainant for refund of taxes will result in a multiplicity of suits by complainant, and a multiplicity of suits

to be defended by the Government of the United States and its officers.

The aforesaid threatened attempt of defendant Guy T. Helvering, purporting to act as Commissioner of Internal Revenue, to force the complainant to deduct the alleged income tax claimed by said defendant to be levied upon the income of the employees would, if complainant should deduct or pay over the tax unlawfully levied upon the income of its said employees, subject complainant to the harassment and expense of claims and demands and to a multiplicity of suits by its employees to recover the amounts so illegally deducted, which amounts will have been paid by complainant to the collecting agency of the United States unless the relief herein sought be granted.

Some of complainant's employees are casual laborers paid daily, many are paid semi-monthly, and many are paid monthly. The Carriers' Taxing Act of 1937 requires employers to collect the income tax levied upon the income of each employee by "deducting the amount of the tax from the compensation of the employee as and when paid." To comply with this requirement complainant will be compelled to set up an account on its books with each of its employees and make the deductions and entries representing the tax daily, semi-monthly, or monthly according to the period "as and when" the employee is paid. Additional entries on each indi-

vidual account will be necessary when payment is made to the collecting agency of the United States.

The aforesaid threatened attempt of said defendants Murray W. Latimer, James A. Dailey and Lee M. Eddy, purporting to act as members of the Railroad Retirement Board, to force complainant to gather and keep records of the employees of complainant would, if complainant should gather and keep such records, put complainant to great expense in obtaining, keeping and supplying the data necessary to arrive at the amount of annuity to which each such employee may be entitled, by reason of the provisions of the Railroad Retirement Act of 1937, as follows:

The annuities payable under the Railroad Retirement Act of 1937 are based upon the "years of service" of the employee. The annuity to which the employee is entitled is to be computed, under the terms of the act, by multiplying the employee's "years of service" by given percentages of his "monthly compensation." "Years of service," under the act, means the number of years an individual as an employee shall have rendered service to one or more employers for compensation or received remuneration for time lost. Where service before January 1, 1937, enters into the computation the act prescribes (1) "that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation earned by an employee in calendar

months included in his years of service in the years 1924-1931, and (2) that where service in the period 1924-1931 is, in the judgment of the board, insufficient to constitute a fair and equitable basis for determining the monthly compensation for service prior to January 1, 1937, the board shall determine the monthly compensation for such service in such manner as in its judgment shall be just and equitable.

By reason of the facts alleged in the next preceding four paragraphs, very heavy burdens and large accounting costs will be imposed upon complainant which will be wholly uncompensated by any remedy at law, but will be largely avoided by the remedy in equity herein sought.

Wherefore, complainant prays:

That this Court, pending the final hearing of this case, issue a temporary restraining order against defendants and each of them individually and in their purported official capacities, and all of their agents and representatives purporting to act under them from doing or attempting to do any of the acts or things which complainant hereinafter prays they be permanently enjoined from doing or attempting to do.

The complainant further prays that upon final hearing:

1. This Court adjudge and decree that none of the provisions of the Railroad Retirement Act of 1935, or of the Railroad Retirement Act of 1937,

or of the Carriers' Taxing Act of 1937, apply to complainant, State of California, as owner and operator of the State Belt Railroad, or to any of complainant's officers or employees performing any services in connection with or for said State Belt Railroad; that said acts do not and each of them, does not authorize the imposition of any tax upon the State of California or upon any of its employees, or authorize the payment of annuities to any of such employees, or the payment of death benefits with respect to the death of any of such employees, or make any of such employees a member of the retirement system established by the Railroad Retirement Act of 1935, or authorize the receiving of credit in such system by any such employee for service to any "employer," as defined in the Railroad Retirement Act of 1937.

2. Defendants Murray W. Latimer, James A. Dailey, and Lee M. Eddy, individually and as members of said Railroad Retirement Board, and their successors in office, and all those acting or claiming to act under their authority or by their direction, be permanently enjoined from taking any step or action to enforce the Railroad Retirement Act of 1935, or the Railroad Retirement Act of 1937 against complainant herein; and from making any order, and from instituting or taking any step toward the institution of any actions, proceedings, or prosecutions, designed to compel complainant or its officers or any of them to

assemble, compile, or furnish any of the information and records required, or which may be required to be furnished under said acts or either of them; and from making or certifying to the Secretary of the Treasury or any other officer of the Treasury Department any award or payment of any information relating thereto designed to authorize, effectuate, or result in any disbursement in payment of any annuity to any employee of complainant, or any benefit with respect to the death of any such employee, or other benefit with respect to any such employee.

3. Defendant Guy T. Helvering, individually and as Commissioner of Internal Revenue, and his successor or successors in office, and all those acting or claiming to act under his authority or by his direction, be permanently restrained and enjoined from making any order and from instituting or taking any steps toward the institution of or maintaining any actions, proceedings, or prosecutions designed to compel complainant or its officers or any of them to pay any amount pursuant to the Carriers' Taxing Act of 1937, and from demanding, collecting or attempting to collect any such amount from complainant or its officers or any of them, and from requiring or demanding from complainant or its officers or any of them the compilation or filing of any return or statement with respect to compensation paid employees, deductions made from such compensation, or taxes payable pur-

suant to said act, or any other return or statement.

To the end, therefore, that defendants may, if they can, show why complainant should not have the relief herein prayed for, complainant further prays that the court issue its writ of subpoena directed to the defendants and each of them, requiring them to appear and answer this bill, but not under oath, their answers under oath being expressly waived, and to abide by and perform such orders and decrees in the premises as to the court will seem proper and required by the principles of equity and good conscience; and complainant prays that it shall have such other, further, and general relief as may be equitable.

U. S. WEBB,
Attorney General of
the State of California,

H. H. LINNEY,
Deputy Attorney General,

LUCAS E. KILKENNY,
Deputy Attorney General,

JAMES J. ARDITTO,
Deputy Attorney General,
Attorneys for Complainant.

VERIFICATION

UNITED STATES OF AMERICA,

State of California,

○ County of Sacramento

ss.

James J. Arditto, being first duly sworn, deposes and says:

That he is a duly appointed and acting Deputy Attorney General of the State of California and as such makes this affidavit for the reason that U. S. Webb, the Attorney General of said State, is absent from the county of Sacramento and is unavailable for the purpose of making said affidavit;

That he has read the foregoing Bill of Complaint and knows the contents thereof and that the facts therein stated are true;

Further, that the Attorney General of the State of California is duly authorized to pray leave to file said Bill of Complaint.

JAMES J. ARDITTO,
Deputy Attorney General,
of California.

Subscribed and sworn to before me by James J. Arditto this ----- day of March, 1938.

Notary Public in and for the
County of Sacramento, State
of California.

EXHIBIT "A"

Murray W. Latimer
Chairman

Lester P. Schoene
General Counsel

J. A. Dailey
L. M. Eddy
R. B. Bronson
Secretary

RAILROAD RETIREMENT BOARD
Washington

September 20, 1937

The Honorable Joseph P. Cereghino
Assistant Secretary of the Board of
State Harbor Commissioners
San Francisco, California

Dear Sir:

There has been referred to this office for attention your affidavit of August 31, accompanying your report under the Railroad Retirement Act of 1937 on Forms BA-2, BA-3, BA-4 and BA-5, of compensation earned by each employee of the State Belt Railroad. You contend in substance that since the State Belt Railroad is wholly owned and operated by the State of California it is not subject to the Railroad Retirement Act of 1937, or the Carriers' Taxing Act of 1937.

Since the Railroad Retirement Board administers only the Railroad Retirement Act, and the Carriers' Taxing Act is administered by the Bureau of Internal Revenue, I must confine my consideration of your protest to its applicability to the Railroad Retirement Act. The Railroad Retirement Act of 1937 includes as an employer, among others, any express company, sleeping car company or carrier

by railroad subject to Part 1 of the Interstate Commerce Act. It neither expressly nor impliedly makes ownership of such a carrier by a State relevant to a determination of its status. The Interstate Commerce Commission has held the State Belt Railroad to be a common carrier by railroad subject to Part 1 of the Interstate Commerce Act (See *California Canneries v. Southern Pacific Company*, 51 I. C. C. 500), and in view of the Supreme Court's decision in *United States v. California*, 291 U. S. 175, there can be no doubt that the Supreme Court would uphold the Commission's decision. The State Belt Railroad, therefore, falls literally within the definition of *employer* in the Railroad Retirement Act. Nor is there any principle of inter-governmental immunity which would prevent the Federal Government from exercising with reference to a State any of the powers exercised in the Railroad Retirement Act. The opinion in *United States v. California* referred to above indicates clearly that there is no such immunity.

To the extent that an inter-governmental immunity from taxation may be asserted to be applicable to prevent the levy of the taxes provided for in the Carriers' Taxing Act of 1937, such immunity is relevant in the first instance only to the Carriers' Taxing Act and not to the Railroad Retirement Act. I am personally of the opinion that the State Belt Railroad is not immune to the levies provided for in the Carriers' Taxing Act, but as I have indicated above this is not a matter within my jurisdiction. Should it ultimately be established that this carrier is immune from the levies provided for in the Carriers' Taxing Act

then the Board would be required to consider the question whether identity of certain provisions in the Railroad Retirement Act and the Carriers' Taxing Act gives rise to such an implication of Congressional intent that the two Acts should be coextensive in applicability as to require exclusion from the Railroad Retirement Act, of an employer otherwise covered, upon the simple ground that it has been established to be immune to taxation. Unless and until such an immunity is established the question does not seem to me to be open for consideration by this Board.

In view of the circumstances above outlined I trust that the State Belt Railroad will cooperate with the Board in the compilation of records and the adjudication of claims. The burdens imposed by the Act are not great, and in my judgment the carrier would be ill advised to resist them.

Very truly yours,

LESTER P. SCHOENE
General Counsel

WESTERN UNION

WASHINGTON DC
1937 NOV 20 PM 1 03

U S WEBB

ATTORNEY GENERAL OF CALIFORNIA
STATE BLDG

RETEL NOVEMBER TWENTY STATE BELT
RAILROAD STOP LETTER OF SEPTEMBER
TWENTY OF LESTER P. SCHOENE GEN-
ERAL COUNSEL ADDRESSED TO HONOR-

ABLE JOSEPH P. CEREGHINO ASSISTANT
SECRETARY BOARD OF STATE HARBOR
COMMISSIONERS STATES BOARDS POSI-
TION STOP NOTHING TO ADD AT THIS
TIME

MURRAY W LATIMER

EXHIBIT "B"

TREASURY DEPARTMENT

Washington

Office of

COMMISSIONER OF INTERNAL REVENUE

Address Reply to Commissioner of Internal Revenue
and Refer to SST:RR:1

February 19, 1938

Hon. U. S. Webb,
Attorney General of California,
San Francisco, California.

Sir:

Reference is made to Bureau telegram dated February 12, 1938, in reply to your letter dated November 13, 1937, requesting advice as to whether the State Belt Railroad, San Francisco, California, and its employees are subject to the taxes imposed under the Carriers Taxing Act of 1937. Such telegram read as follows:

"STATE BELT RAILROAD SAN FRAN-
CISCO CALIFORNIA AND ITS EMPLOY-
EES HELD SUBJECT TO TAXES IM-

**POSED BY CARRIERS TAXING ACT OF
NINETEEN HUNDRED THIRTYSEVEN
LETTER FOLLOWS."**

In confirmation of the ruling set forth above, you are advised that after careful consideration of the evidence available to the Bureau and of the applicable provisions of the Carriers Taxing Act of 1937, it is held that liability for the taxes imposed under that Act is incurred by the State Belt Railroad and its employees.

Respectfully,

GUY T. HELVERING
Commissioner.

cc Collector,
San Francisco, California.

EXHIBIT C

Senate Bill No. 248.

CHAPTER 372.

An act to add Part 1, comprising sections 1690 to 3231, inclusive, to Division VI and to add sections 10004, 10005, and 10005.5 to, the Harbors and Navigation Code, relating to the harbor of San Francisco and the Board of State Harbor Commissioners for San Francisco Harbor, and to repeal certain acts and parts of acts specified herein.

[Approved by the Governor May 25, A. D. 1937.]

The people of the State of California do enact as follows:

SECTION 1. Part 1, comprising sections 1690 to 3231, inclusive, is hereby added to the Harbors and Navigation Code, to read as follows:

DIVISION VI. HARBORS AND PORTS.

PART 1. SAN FRANCISCO HARBOR.

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS.

1690. Whenever the term "Board of State harbor commissioners," "board," "commissioners" or any other term designating the Board of State Harbor Commissioners for San Francisco Harbor is used in this part, it means and includes any successor to the Board of State Harbor Commissioners.

1691. Whenever the term "city of San Francisco," or the term "county of San Francisco," or "San Francisco," is used in this part, it means the City and County of San Francisco.

1692. "Board," as used in this part, means the Board of State Harbor Commissioners for San Francisco Harbor.

1693. "Fund," as used in this part, unless the context specifically indicates otherwise, means the San Francisco Harbor improvement fund.

CHAPTER 2. BOARD OF STATE HARBOR COMMISSIONERS.

Article 1. Administrative Provisions.

1700. There is in the State government a Board of State Harbor Commissioners for San Francisco Harbor, consisting of three commissioners. This board is the successor to all previous boards of State harbor commissioners for San Francisco Harbor. The commissioners shall hold office at the pleasure of the Governor. All vacancies on the board shall be filled by appointment by the Governor. When an appoint-

ment of a successor to any commissioner is made by the Governor, it is valid, subject to the consent of the Senate at its next regular session. Until such session the person appointed has the same authority as if his appointment had been confirmed by the Senate.

1701. If the Senate, during its session, fails to act on or if it refuses its consent to any appointment the Governor may make to the board, the Governor shall, after the adjournment of the Senate, appoint the persons he desires to appoint, which appointments are valid, subject to the consent of the Senate at its next regular session. Until such session these appointees have the same authority as if their appointments had been confirmed by the Senate.

1702. The Governor of the State and the mayor of the city of San Francisco are ex officio additional members of the board only for the special purposes authorized by this part, but they shall participate in the action of the board, only as specifically provided by this part.

1703. The commissioners shall each give an official bond in the sum of fifty thousand dollars, which, if satisfactory, shall be approved by the Governor and State Treasurer by written indorsement thereon.

Neither a commissioner nor any officer of the State, nor any officer or member of the Legislature, shall be accepted as a surety on these bonds. Each bond, accompanied by the official oath required by law, shall be filed and recorded in the office of the Secretary of State within fifteen days after the appointment of the commissioner for whom it is given.

1704. Official bonds which are required to be given by this part shall be in favor of the people of the State of California.

1705. The annual salary of the president of the board is five thousand dollars; and the annual salary of each of the other two commissioners is three thousand dollars. The salaries of the secretary and the attorney shall be fixed by the board, with the approval of the Director of Finance. The board shall fix the compensation of other employees. When salaries or compensation are due for services rendered in connection with any work which is payable from the proceeds of the sale of bonds, such salaries or compensation shall be paid out of the proceeds of these bonds. All other salaries and compensation shall be paid out of the San Francisco Harbor improvement fund.

An ex officio officer or consulting engineer shall not receive any compensation, except traveling and other incidental expenses.

1706. With the exception of money received from the sale of bonds the disposition of which is otherwise provided for by law, all money received by the board pursuant to

this part shall be accounted for and reported monthly by the board to the State Controller and at the same time remitted to the State treasury to the credit of the San Francisco Harbor improvement fund. The fund shall be expended, in accordance with law, for the payment of all actual and necessary expenses incurred in carrying out the provisions of law prescribing or relating to the duties, powers, purposes, responsibilities, jurisdiction, and the work and affairs of the board.

1707. The revenue collected and disbursed by authority of this part shall be lawful money of the United States.

1708. The board shall, on or before the first day of November, in each odd-numbered year, make a full report to the Governor of all money received and disbursed by it, stating specifically, their source and the purpose for which expended. The report shall include a concise account of all improvements made, and the general condition of the property in charge of the board.

1709. The board shall adopt a seal.

1710. The Attorney General shall give such legal advice and render such legal services as may be required of him by the board, in connection with its duties, without further compensation.

Article 2. Officers, Appointees and Employees.

1730. The board shall organize by electing one of its members president. He shall preside at its meetings, supervise the official conduct of its officers and employees, especially in the collection, custody, and disbursement of the revenues, and shall require all the books, papers, and accounts to be accurately kept in proper form, and require the provisions of law and the regulations of the board to be enforced and observed. He may administer official oaths to the officers and employees of the board, except the other commissioners, and to all other persons in relation to the business of the board.

1731. The president is the chief executive officer of the board and shall supervise the conduct of the dock system, the State Belt Railway, and all other departments of the harbor business.

1732. The board shall appoint the following officers: A secretary, an assistant secretary, an attorney, a chief wharfinger, and any necessary number of wharfingers and collectors.

1733. The secretary shall keep the office of the board open every day, legal holidays excepted, from nine a.m. till four p.m. He shall safely keep and is responsible for all moneys paid into the office, and for all the books and papers of the board. He shall attend meetings of the board and keep a

perfect record of its proceedings, with the names of the commissioners present.

He shall keep in proper books an account of all money received and paid pursuant to this part, and on or before the fifth day of each month, send to the State Controller a statement thereof for the preceding month, under oath, showing the sources from which money was received, and the purposes for which paid, and he shall also report to the Controller the amount paid to the State Treasurer for the month covered by the statement.

He shall record, at length, all contracts and agreements made by the board, and keep a record of all personal property purchased, and its cost; and if any is sold, the name of the purchaser, date of sale, and the price received.

Before entering on the duties of his office, he shall give an official bond in the sum of fifty thousand dollars, and take and subscribe an official oath. The bond, if satisfactory, shall be approved by the board, by written indorsement thereon, and filed with his oath in the office of the Secretary of State.

1734. The assistant secretary shall attend the office during office hours, and shall perform any service which may be required of him by the secretary of the board. Before entering on his duties, he shall give an official bond in the sum of twenty thousand dollars, and take and subscribe an official oath. The bond, if satisfactory, shall be approved by the board by written indorsement thereon, and filed with his oath in the office of the Secretary of State.

The attorney shall attend to the prosecution and defense of all suits, and render such legal service as may be required of him by the board.

1735. The chief wharfinger shall station, berth, and regulate the position of vessels in the docks and harbor, and cause them to remove from time to time, and from place to place, as the general convenience, safety, and good order may require. He shall also assign berths to vessels in the order of their application after entering the harbor.

He shall also supervise the wharfingers, and report to the board all cases of failure to perform their duties. He shall also require all shipmasters, consignees, pilots, and masters of towboats to conform to the regulations of the board.

He shall also require the docks, slips, wharves, piers, and other premises under the jurisdiction of the board to be kept free of all obstructions, and when any person fails to obey his order to remove them, he shall forthwith report the fact to the board, and execute its order in relation thereto.

He shall also take and subscribe an official oath, and give such official bond as the board may require, subject to its approval, to be indorsed thereon. The bond and oath shall be filed in the office of the board.

1736. The chief wharfinger shall keep an office in some convenient place upon the city front, between Market and Pacific streets, which shall be kept open every day, Sundays and holidays excepted, from seven a.m. till six p.m. The board shall furnish a suitable building for an office, for the exclusive use of the chief wharfinger and assistant chief wharfinger, with suitable office furniture. The chief wharfinger shall execute and enforce the rules and regulations which may be established by the board pursuant to the provisions of this part. All pilots, masters of tugboats, masters, owners, and consignees of vessels, shall obey all lawful orders and directions of the chief wharfinger in relation to the stationing, anchoring, and removal of vessels pursuant to such rules and regulations. The chief wharfinger may determine cases of collision, by consent of all parties interested, and where damages do not exceed three hundred dollars his decision is final.

1737. The chief wharfinger shall take in charge all abandoned vessels and all vessels picked up adrift, and secure them, after which he shall advertise, for one week, in one of the daily newspapers printed in the city of San Francisco, giving the full particulars and requesting that all persons interested appear and establish their title or claim within twenty days from the last publication. If claimed within that period, such property shall be delivered to the owner on payment of all costs of removing, securing, and advertising it. If not claimed within that period, or if the owner fails to pay the charges, such property shall be sold by the chief wharfinger, at public auction to the highest bidder and the proceeds, less the costs, shall be paid to the owner, if claimed by him, or, if not claimed by the owner, shall be paid to the board; but the owner is entitled to receive from the board the amount so paid, if he claims it within one year from the date of payment to the board.

For the purposes of this section the harbor of San Francisco includes the tidewaters of the city of San Francisco, and the jurisdiction of the chief wharfinger is, when performing the duties required by this section, coextensive with such tide-waters.

1738. The wharfingers have supervision of the wharves to which they are assigned, and they shall require the regulations of the board and orders of the chief wharfinger to be respected and obeyed, and good order preserved thereon.

1739. The collectors shall collect the revenues in the manner the board directs, and shall daily account for and pay all moneys into the board's office.

The wharfingers and collectors shall each take and subscribe an official oath, and give such official bond as the board

may require, subject to its approval, to be indorsed thereon. The bond and oath shall be filed in the office of the board.

1740. The board shall appoint a chief engineer. His salary shall be fixed by the board, with the approval of the Director of Finance and shall be paid out of the San Francisco harbor improvement fund. He shall take and subscribe an official oath, and furnish the State with a bond in the sum of ten thousand dollars for the faithful performance of his duties, which bond, if satisfactory, shall be approved by the Governor and filed with his oath in the office of the Secretary of State.

1741. The chief engineer shall prepare such plans and specifications as the board may direct, and if they are adopted, and the work is ordered by the board to be done, he shall superintend it. He shall give constant attention to the condition of the seawall and thoroughfare, buildings, structures, wharves, and the streets or parts thereof under the jurisdiction of the board.

When repairs are needed he shall report to the board their nature and extent, and if ordered by the board he shall have them made at once. He shall also keep himself informed as to the depth of water in the various docks and slips, and report to the board when dredging is required and if ordered by the board he shall have it done. He shall keep records showing the date, place, and character of every piece of work done and dock dredged, when begun, and when finished, with proper descriptions and drawings. He shall do all engineering work required by the board, and shall be subject at all times to its control. He shall devote his entire time to the service of the board.

1742. The board may, in its discretion, employ an assistant to the chief engineer, an assistant to the chief wharfinger, draftsmen, a superintendent of dredgers, and such men on the dredgers, scows, towboats, and fire boats, and in doing urgent repairs as it deems advisable, and prescribe their bonds, duties, and compensation.

1743. A person shall not be appointed to any office by virtue of this part unless he is a qualified elector of the State, nor shall any person be so appointed or employed who is interested in any vessel sailing or plying in and out of or on the inland waters of the Bay of San Francisco, as owner, mortgagee, or otherwise, or as a stockholder in any company owning such vessels, or who is a consignee, the general or freight agent or manager of any such vessel, or agent or other employee of the owner of any such vessels, or who is engaged in the business of marine insurance, or of procuring such insurance, or who is engaged as a stevedore, in loading and discharging such vessels.

1744. A person who is not a citizen of the United States shall not be employed either as contractor or laborer on any work done under this part.

1745. Eight hours shall constitute a legal day's work, whether performed directly for the State or for the person or persons receiving a contract under this part.

1746. An officer or employee of the board shall not be removed or otherwise prejudiced for refusing to contribute to any political fund, or to render any political service; nor shall the members of the board, collectively or individually, use their official influence to coerce the political action of any officers or employees.

1747. All the above-named officers shall perform such other duties pertaining to their positions as the board may prescribe.

CHAPTER 3. BOUNDARIES.

1770. Subject to any valid leases the board has possession and control of that portion of the bay of San Francisco, and the adjacent territory, together with all the improvements, rights, privileges, easements, and appurtenances connected therewith, or in anywise appertaining thereto, for the purposes provided by this part, which is bounded as follows:

Commencing at the intersection of the center line of Lewis Street with the center line of Webster Street; running thence easterly along the center of Lewis Street to a point distant 514.19 feet westerly from the westerly line of Van Ness Avenue; thence northerly 21.78 feet to a point distant 514.65 feet westerly from the westerly line of Van Ness Avenue; thence easterly 156.0 feet to a point distant 358.68 feet westerly from the westerly line of Van Ness Avenue and 25.02 feet northerly from the center line of Lewis Street; thence southerly 25.02 feet to a point on the center line of Lewis Street distant 358.16 feet westerly from the westerly line of Van Ness Avenue; thence easterly along the center of Lewis Street to the center of Polk Street; thence southerly along the center of Polk Street to the southerly line of the Embarcadero; thence easterly along the southerly line of the Embarcadero to a point 275 feet west of the westerly line of Hyde Street measured at right angles thereto; thence southerly parallel with the westerly line of Hyde Street to a point 225 feet north of the northerly line of Jefferson Street; thence easterly parallel with the northerly line of Jefferson Street to the westerly line of Hyde Street; thence southerly along the westerly line of Hyde Street to the center of Jefferson Street; thence easterly along the center of Jefferson Street to the southerly line of the Embarcadero; thence easterly along the southerly line of the Embarcadero to the center of Powell Street; thence southerly along the center

of Powell Street to the center of Beach Street; thence easterly along the center of Beach Street to the southerly line of the Embarcadero; thence easterly along the southerly line of the Embarcadero to the center of Grant Avenue; thence southerly along the center of Grant Avenue to the center of North Point Street; thence easterly along the center of North Point Street to the southwesterly line of the Embarcadero; thence south-easterly along the southwesterly line of the Embarcadero to the center of Kearny Street; thence southerly along the center of Kearny Street to the center of Francisco Street; thence easterly along the center of Francisco Street to the center of Montgomery Street;

Thence southerly along the center of Montgomery Street to the center of Chestnut Street; thence easterly along the center of Chestnut Street to the center of Sansome Street; thence southerly along the center of Sansome Street to the center of Lombard Street; thence easterly along the center of Lombard Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to the center of Battery Street; thence southerly along the center of Battery Street to the center of Greenwich Street; thence easterly along the center of Greenwich Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to the center of Front Street; thence southerly along the center of Front Street to the center of Vallejo Street; thence easterly along the center of Vallejo Street to the center of Davis Street; thence southerly along the center of Davis Street to the center of Pacific Street; thence easterly along the center of Pacific Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to the center of Folsom Street; thence westerly along the center of Folsom Street to the center of Steuart Street; thence southerly along the center of Steuart Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to a point 137.5 feet southerly from the southerly line of Harrison Street, measured at right angles thereto; thence westerly parallel to Harrison Street to the center of Spear Street; thence southerly along the center of Spear Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to the center of Bryant Street; thence westerly along the center of Bryant Street to the center of Beale Street; thence southerly along the center of Beale Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to the center of Brannan Street; thence westerly along the center of Brannan Street to the center of First Street; thence southerly along the center of First Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to the

center of Townsend Street; thence westerly along the center of Townsend Street to the center of Gale Street; thence southerly along the center of Gale Street to the center of King Street; thence westerly along the center of King Street to the center of Second Street;

Thence southerly along the center of Second Street to the center of Berry Street; thence westerly along the center of Berry Street to the center of Third Street; thence southerly along the center of Third Street to the northerly line of Channel Street; thence westerly along the northerly line of Channel Street to the easterly line of Seventh Street; thence southerly along the easterly line of Seventh Street to the southerly line of Channel Street; thence easterly along the southerly line of Channel Street to the center of Third Street; thence southerly along the center of Third Street to the center of Fourth Street; thence southeasterly along the center of Fourth Street to the center of Georgia Street; thence southerly along the center of Georgia Street to the center of Alameda Street; thence easterly along the center of Alameda Street to the westerly line of the Embarcadero; thence southerly along the westerly line of the Embarcadero to a point distant 130 feet easterly from the easterly line of Georgia Street, measured at right angles thereto; thence southerly, parallel with Georgia Street to the center of El Dorado Street; thence westerly along the center of El Dorado Street to the center of Illinois Street; thence southerly along the center of Illinois Street to the southerly line of Eighteenth Street; thence easterly along the southerly line of Eighteenth Street to the waterfront line established by the Board of State Tideland Commissioners; thence southerly along said last mentioned line to the northerly line of Tulare Street; thence westerly along the northerly line of Tulare Street to the center of Texas Street; thence southerly along the center of Texas Street produced to the southerly line of Islais Street produced westerly; thence easterly along the southerly line of Islais Street to the easterly line of Third Street; thence southerly along the easterly line of Third Street to the southwesterly line of Arthur Avenue; thence southeasterly along the southwesterly line of Arthur Avenue to the westerly line of India Street; thence southerly and easterly along the westerly and southerly lines of India Street to the center of Waterfront Street; thence southerly along the center of Waterfront Street to the northwesterly line of China Street; thence southwesterly along the northwesterly line of China Street to the southwesterly line of Custer Street; thence southeasterly along the southwesterly line of Custer Street to the southeasterly line of Dry Dock Basin; thence northeasterly along the southeasterly line of Dry Dock Basin to the waterfront line established by the

Board of State Tideland Commissioners; thence southerly along said last mentioned line to the northeasterly line of Evans Avenue produced; thence northwesterly along the northeasterly line of Evans Avenue produced, to the center of Waterfront Street; thence southerly along the center of Waterfront Street to the northeasterly line of Shafter Avenue; thence northwesterly along the northeasterly line of Shafter Avenue to the northwesterly line of Alvord Street; thence southwesterly along the northwesterly line of Alvord Street to the northeasterly line of Wallace Avenue; thence northwesterly along the northeasterly line of Wallace Avenue to a point distant 239.32 feet southeasterly from the southeasterly line of Ingalls Street; thence southwesterly to a point on the southwesterly line of Yosemite Avenue distant 316.27 feet southeasterly from the southeasterly line of Ingalls Street; thence southeasterly along the southwesterly line of Yosemite Avenue to the center of Waterfront Street; thence southerly along the center of Waterfront Street to the southern boundary of the City and County of San Francisco; thence along the southerly, easterly and northerly boundary lines of said city and county to a point due north of the place of commencement; thence south to the place of commencement.

1772. The board has the powers, controls and possessions granted by this part relating to properties of the State of California mentioned in this part in addition to all powers, controls and possessions otherwise granted the board by the laws of the State of California.

The board has the possession, management and control of all property belonging to the State located within the city of San Francisco, but outside of the boundaries of the pueblo of San Francisco and which property is appurtenant to, or adjacent to, or constitutes a portion of the navigable waters of the bay of San Francisco, or any arm, channel, basin, inlet, or waterway constituting a part of or adjacent to, the bay of San Francisco, within the city of San Francisco.

1773. Seawall lot number twenty-six is all that certain lot, piece or parcel of land situate, lying and being in the city of San Francisco, State of California, and particularly described as follows:

Beginning at the point where the northeasterly line of Third Street cuts the southeasterly line of Berry Street, said point being distant three hundred twenty-two and five-tenths (322.5) feet from the southeasterly line of King Street; thence running easterly at an angle of nineteen degrees seventeen minutes twenty-six seconds ($19^{\circ} 17' 26''$) with said southeasterly line of Berry Street eight hundred eighty-eight and fifty-four hundredths (888.54) feet, more or less, to the westerly line of the Embarcadero; thence northerly along

said line of the Embarcadero two hundred thirty-six and ninety-eight hundredths (236.98) feet, more or less, to the southeasterly corner of seawall lot number twenty-five (25); thence at a right angle westerly along the southerly line of said lot one hundred ten and ninety-six hundredths (110.96) feet, more or less, to the southwesterly corner of said lot; thence northwesterly along the southwesterly line of said lot forty-one and forty-eight hundredths (41.48) feet, more or less, to the westerly corner of said lot; thence at a right angle southwesterly along the southeasterly line of Berry Street nine hundred eight and ninety-one hundredths (908.91) feet to the point of beginning; containing three and four-tenths (3.4) acres of land.

1775. For the purpose of acquiring additional area for the construction of docks, wharves, slips, and piers and increasing the harbor facilities on the water front of the city of San Francisco, the board may acquire, when in its discretion it is deemed for the best interests of the harbor, by purchase, condemnation, gift, grant, or cession, for and on behalf of the State, all that certain tract or parcel of land situated in the city of San Francisco, State of California, and particularly described as follows:

Commencing at a point in the bay of San Francisco, distant three thousand five hundred seventy feet southeasterly from the southerly corner of Brannan and Second streets, as the same are laid down on the official map of said city, said distance being measured along the extension southeasterly of the southwesterly line of Second Street; thence in a southwesterly direction, at right angles with said line of Second Street extended, five hundred feet; thence at right angles southeasterly eight hundred feet; thence at right angles northeasterly eight hundred feet; thence at right angles northwesterly eight hundred feet; and thence at right angles southwesterly three hundred feet, to the point of commencement; said tract of land being a square, including the rock known as Mission rock, together with the wharves and other improvements thereupon and the appurtenances thereunto belonging.

The jurisdiction of the board is extended so as to include all of the land described in this section.

The portion of said tract held in private ownership and the portions that are owned by the United States of America may be separately acquired by the board, and the board may accept from the United States a cession or gift or grant or it may acquire all or any portion of the tract by purchase or condemnation.

The board may pay the purchase price thereof, or any judgment rendered, in such condemnation proceedings by drafts drawn upon the Controller of the State, who shall draw his

warrant or warrants therefor on the State Treasurer, payable out of any moneys in the State treasury to the credit of the "San Francisco harbor improvement fund" or of the "Third San Francisco sea wall fund," or partly from one and partly from the other of these funds, in the discretion of said board.

1776. The board may acquire, by purchase or condemnation, any land held in private ownership seaward of the water front line for the purposes of commerce and navigation, and any land lying seaward of the water front line of the city of San Francisco is necessary for commerce and navigation and is hereby declared a public use for that purpose.

1777. The board may acquire by purchase or by exchange of property, any lands along the water front of the city of San Francisco for the purpose of the commerce of the port and upon such acquisition, the jurisdiction of the board is extended so as to embrace such property.

1778. For the purpose of acquiring terminal facilities for the landing of passengers to and from the passenger and ferry depot at the foot of Market Street, in the city of San Francisco, the board may institute condemnation proceedings in the superior court of the city of San Francisco, against all parties in interest claiming any title in and to that certain lot, piece, or parcel of land in the city of San Francisco, bounded and described as follows, to wit:

Commencing at a point on the westerly line of East Street, distant thereon sixty (60) feet and four (4) inches northerly from the northwesterly corner of the intersection of the northerly line of Market Street with said westerly line of East Street; thence southerly along said westerly line of East Street sixty (60) feet and four (4) inches to the intersection of said line of East Street with the northerly line of Market Street; thence westerly along the northerly line of Market Street eighteen (18) feet and six (6) inches to the intersection of the northerly line of Market Street with the north line of Sacramento Street; thence west along the north line of Sacramento Street seventy-nine (79) feet and eleven (11) inches to a point on said north line of Sacramento Street; thence northeasterly to the point of beginning.

The inshore limit of the jurisdiction of the board is extended so as to include the lot of land described in this section.

The board may pay any judgment rendered against it in such condemnation proceedings, by a draft drawn upon the Controller of the State, who shall draw his warrant therefor on the State treasury, payable out of any money in the treasury credited to the San Francisco harbor improvement fund.

1779. So much of the line for a harbor embankment or sea wall of the Port of San Francisco, adopted on the twelfth day of September, one thousand eight hundred and seventy-seven, by the Governor, the mayor of the city of San Francisco; and the State Harbor Commissioners, and indicated on the maps filed in the offices of the Board of Harbor Commissioners and of the recorder of the city of San Francisco, as extends from the east line of Taylor Street to the boundary line between the city of San Francisco and the county of San Mateo, and the water front line as described by Chapter 119 of the Statutes of 1880, page 132, is hereby ratified and confirmed, and shall be known as the "Water Front Line" of the city of San Francisco.

1780. The inshore limit of the jurisdiction of the board shall be and remain as defined in this part; but when any section of the sea wall and thoroughfare mentioned in Chapter 8, of this part, is constructed and ready for use, then the inshore limit of its jurisdiction as to such section shall be the inner line of said thoroughfare. But its jurisdiction in and over China, Central, South, India, and Dry Dock basins, and in and over Channel Street, and Islais Creek channel, and the canal opening into South Basin, shall extend as far as the ebb and flow of tidewater.

1781. China, Central, South, India, and Dry Dock basins, as laid out by the Board of Tide Land Commissioners, and Channel Street, Islais Creek Channel, and the canal opening into South Basin, as far as the ebb and flow of tide in them, are dedicated to public use for the purposes of commerce and navigation, and are subject, together with the streets inclosing or bounding on them, and the sea wall and thoroughfare constructed across their openings, to the jurisdiction of the board. In case the sea wall or thoroughfare is extended across them, openings therein, with proper drawbridges, shall be constructed, of sufficient width to allow free and easy entrance and exit, and they shall be dredged to such depth as may be needed by the class of vessels using them.

1782. If the lines of the water front of the city of San Francisco, or the lines of any of the streets ending at the waterline are changed by authority of this part, the board shall cause to be made two accurate maps of survey, showing such change, which maps shall be dated, certified, and signed by the members of the board and its engineer; one to be filed in the office of the recorder of said county and the other in the office of the board. When filed, they are official maps in all courts of record.

1783. The board may make an agreement with the owner of any property, lying adjacent to the water front

property under the jurisdiction of the board, for the purpose of determining the precise location of any seawall, thereafter to be built, adjacent to or upon such privately owned property and may accept grants of land from such private property owners in consideration thereof. When such agreement has been made, the determination of the location is binding on all succeeding boards.

1784. The board has possession, jurisdiction and control over the blocks and parts of blocks formed by the change of the water front and the extensions of the streets to the water front thoroughfare, and it shall remove any obstructions placed thereon in the same manner as provided for the removal of obstructions from the piers, wharves and thoroughfares. The board may keep and maintain these blocks and parts of blocks as open spaces for the use of the public, or it may inclose them. The board may also assign the use of portions thereof for purposes most advantageous to the commerce of the port, and upon such terms and conditions as it may determine. All such assignments shall terminate at the pleasure of the board.

1785. Whenever the board is authorized to acquire any lands or property by purchase or condemnation, the uses mentioned in the law authorizing such acquisition are hereby declared to be public uses, in behalf of which the right of eminent domain may be exercised by the board for and in the name of the people of the State of California, for the estates and rights specified in, and in the manner provided in Part III, Title VII, of the Code of Civil Procedure.

1786. Upon the termination of any lease of property subject to its jurisdiction, the board shall take possession of such property and its improvements. Until the termination of such lease the board shall require that no rights or privileges are exercised which are not conferred by a lease.

1787. The fact that this code is enacted at a date subsequent to the enactment of the California Toll Bridge Authority Act, shall not be construed to alter, increase or diminish the respective rights, powers, duties, responsibilities and jurisdiction of the Board of State Harbor Commissioners for San Francisco Harbor, the California Toll Bridge Authority, or the Department of Public Works.

CHAPTER 4. POWERS.

Article 1. In General.

1900. The board may make reasonable rules and regulations concerning the control and management of the property of the State which is intrusted to it by this part. The board shall also make and publish not less than thirty days in a

daily newspaper of general circulation published in the city of San Francisco, all needful rules and regulations not inconsistent with the laws of the State or of the United States in relation to the mooring and anchoring of vessels in the harbor, and in relation to providing and maintaining free, open, and unobstructed passageways for steam ferryboats and other steam vessels navigating the waters of the bay of San Francisco and the fresh-water tributaries of the bay so that such steam vessels can conveniently make their trips without impediment from vessels at anchor or other obstacles.

1901. The board may rent an office in the city of San Francisco, between Montgomery, Market and Pacific streets and the city front; and it may purchase suitable books for the records of the secretary and accounts of the wharfingers, together with such stationery as may be required by the board.

1902. The board may insure against loss or damage by fire or other disaster the wharves, docks, bulkheads and structures contained thereon, and improvements located on the inside and outside of the water front line, and all property of the State under its control and supervision.

1903. The cost shall not exceed two per cent per hundred in premiums for policies to be written for a three years' term and it shall be paid out of the San Francisco harbor improvement fund.

1904. The board may construct, maintain, and operate freight storage space, oil tanks, and other oil containers and facilities in connection therewith as may be expedient and to the advantage of the commerce of the port of San Francisco, in order that the present practice of storage at the port of San Francisco may be continued. It may fix charges and make rules and regulations for the operation thereof.

1905. The board may also construct, maintain, and operate conveyors on, above and under the ground from and to and between the piers and wharves and other property of the State and to and from the piers and wharves and other property of the State and under the jurisdiction of the board and to and from the property owned by the State and fronting on the Embarcadero from any property of the State under the jurisdiction of the board as is expedient and to the advantage of the commerce of the port of San Francisco, and it may fix all charges and make rules and regulations for the operation thereof.

1906. This chapter does not constitute the board warehousemen nor authorize it to engage in the warehouse business, or to issue warehouse or storage receipts, or otherwise to act as bailee, or to exercise other than a governmental function in carrying out the purpose of this part. The purpose of this chapter is to enable the board to furnish necessary storage

space for export and import tonnage, and competitive tonnage, which could use other ports, and which needs temporary storage through inability to connect with forwarding carriers, so as to enable this tonnage to move through the port of San Francisco, but this declaration of purpose shall not limit or qualify the rights or duties of the board to construct, maintain, or operate oil tanks and other oil containers.

1907. The board may make rules and regulations governing:

(a) The removal of vessels from wharves and other landings, and from slips and docks when they are not engaged in receiving or discharging cargo.

(b) Prescribing the time during which goods landed upon any wharf or thoroughfare may remain thereon, and it may divide the same into several classes, and provide that if any such goods remain upon any wharf, or thoroughfare beyond the term so prescribed, the respective wharfinger may, under the order of the board, remove and deposit the same in a suitable place, at the charge, risk, and expense of the owner.

1908. The board may contract with the city of San Francisco for the use of two fire boats owned by the city and as long as these boats remain in commission, for use on San Francisco Bay for protection against fires of shipping and for the protection of the property of the State or any political subdivision thereof on the water front of San Francisco. One-half of the expense of maintenance of the fire boats shall be paid by the city and one-half shall be paid out of the San Francisco harbor improvement fund. The amount so expended out of the San Francisco harbor improvement fund shall not exceed the sum of ninety-two thousand five hundred dollars in any year.

The board of fire commissioners of the city shall each month make an itemized account of the expenses of maintenance of the fire boats, including the salaries of the officers, firemen and crews, and file two copies with the State Board of Harbor Commissioners and one copy with the Department of Finance. The Board of State Harbor Commissioners shall audit and certify to the account, and it shall transmit it to the Department of Finance.

In addition to the amounts which may be collected for the purposes specified in this part by the board, there shall be collected an amount sufficient to carry out the provisions of this section.

1909. The board, in addition to the powers now granted, or which may hereafter be granted to it by law, may locate, construct, maintain, operate and extend public drydocks in and about the portions of the bay of San Francisco under its jurisdiction.

1910. The board shall fix, regulate, impose and collect tolls or compensation for and upon the use of such public dry docks and regulate their use.

1911. All money collected for tolls or compensation for the use of public dry docks and all expenditures made in their maintenance and construction are subject to the same provisions as other money collected and expended by the board.

1914. The board may prosecute, in the name of the people of the State of California, actions for the possession of any portion of the premises described in this part, situated between the inshore line, or line nearest the mainland, and the line offshore six hundred and fifty feet therefrom, and parallel therewith, or for the annulling of any lease or contract entered into by the board in behalf of the State, or virtue of any general or special law, or for the collection of any money due, or which may become due the State by authority of this part.

The board may also prosecute actions for the removal of all unlawful obstructions in or upon the premises, or for the removal of all unlawful obstructions in or upon the streets through the center of which the inshore line, or line nearest the mainland, runs. It may also remove any unlawful obstructions thereon after the owner, possessor, or occupant of the obstruction has had five days' notice, in writing, to remove the same, either served on the owner, possessor, or occupant or posted upon the obstruction by the chief wharfinger, assistant wharfingers, or wharfinger.

Article 2. Commerce Merchants.

1906. Upon application of any person receiving or expecting to receive perishable products to be delivered by carrier upon any wharf on the San Francisco water front, the board shall issue free of charge a permit authorizing him to sell those products when delivered on the wharves or State property, during the time perishables are permitted to remain under the general regulations prescribed by the board.

1907. The permit shall not be issued unless the applicant has signed and filed with the board an application which reads as follows:

"I (or we) _____, expecting to receive and permit to be delivered by carrier on the wharves or other property of the State of California in the city of San Francisco, and desiring to dispose of those products before removal, hereby make application for a permit to be valid for one year from the date of issue, to sell perishable products on the wharves or other State property, in consideration of the

receipt of a permit, I (or we) promise to faithfully observe all the regulations which are or may be prescribed by the Board of State Harbor Commissioners in regard to such sales, and in particular I (or we) agree that I (or we) will not, during the life of the permit, be a party to any conspiracy, agreement or understanding whereby I (or we) shall refuse to sell to any solvent purchaser or buy from any person whatever, and I (or we) agree that I (or we) will sell, impartially, and at the same price, to all who desire to purchase for cash, without regard to their business or intended disposition of the products, and will exercise no discrimination whatever between buyers or sellers, by reason of their occupation, affiliations or nonaffiliations. I (or we) also agree that in case of violation of this agreement, the Board of State Harbor Commissioners may revoke the permit hereby applied for, whereupon I (or we) agree to surrender it, and I (or we) agree that the Board of State Harbor Commissioners shall be the sole judges of the fact of a violation, I (or we) having had a hearing in the matter.

Date,

1932. The permit shall be in any form the board determines and is valid for one year from date of issue.

1933. In case of a violation of the agreement contained in the application, by the holder, the board, upon a hearing after giving due notice to all persons concerned and finding the fact of a violation, shall revoke and cancel the permit, and it shall not issue a new permit to the offending person, except upon a new execution of the agreement and the payment of a fee of fifty dollars. The right to receive a new permit rests in the discretion of the board.

1934. Perishable products consigned to persons not holding the permit required by this article, and delivered by carrier upon any wharf on the San Francisco water front, shall be removed from the wharf within twenty-four hours after arrival, and the board shall levy and collect on each perishable products in addition to the regular tolls, any additional wharfage as it may prescribe, but not less than the amount of the regular tolls, for each twenty-four hours or fraction thereof which these perishable products remain upon the wharf.

1935. The board and all its officials and employees are charged with the enforcement of this article, and shall eject from the wharves or other state property all persons found attempting to make sales in violation thereof. The board through any officials it may designate, shall prosecute all violations of this article.

1936. Every person who sells upon the public wharves or other property belonging to this State in the city of San Francisco which is within the jurisdiction of the board, any

fruit, vegetables, poultry, eggs, honey, game, or other produce commonly known, and referred to as perishable products, unless he, or the person whom he duly represents, holds a permit issued in accordance with the provisions of this article, is guilty of a misdemeanor punishable by a fine of not less than twenty-five nor more than five hundred dollars.

Article 8. Aircraft Facilities.

1940. As used in this article:

"Aircraft" includes any contrivance used or designed for navigation or flight in the air, except a parachute, or other contrivance designed for air navigation but used primarily as safety equipment.

1941. "Airport" includes any terminal landing field or other supporting surface, including elevated platforms, structures fixed thereto or anchored or floating thereon, which is suitable for the landing or taking off of aircraft.

1942. "Platform" includes any terminal landing or other supporting surface, elevated or otherwise, which is suitable for the landing or taking off of aircraft.

1943. "Air navigation facility" includes any airport, landing platform, light, or other signal structure, radio directional finding facility, radio or other electrical communication facility, and any other structure or facility used as an aid to air navigation.

1944. The board may construct, keep, maintain and improve, upon any of the property under its control, at any location or locations which are advisable and the needs of commerce require, any number of platforms, or places for the landing of aircraft, airports or any air navigation facility, appurtenance, convenience or requirement necessary or useful in conjunction with, and in the furtherance of needs of commerce by aircraft.

1945. The board may by rules and regulations control the use of such places of landing, or of moorage, and the use of other property within its jurisdiction for any other kind of transportation, so as not to interfere with the transportation by air. It may regulate the receipt, deposit and removal of property, and the embarkation or disembarkation of passengers to and from such landing places or moorage.

It may charge fees and tolls for the use of landing places or for moorage, and it has a lien to enforce the payment thereof.

It may lease, or assign for operation, any place or appurtenance, appliance or other convenience, or thing useful in connection therewith, and it may do and cause to be done all things necessary in conjunction with air traffic, and

the property within its jurisdiction. It has the jurisdiction, and may exercise the powers, and perform the duties, authorized by this part so far as they apply to air traffic and are consistent therewith.

Article 4. Commissions on Bond Sales.

1960. The State Treasurer, upon the approval of the Governor and the Director of Finance, may enter into agreements to pay commissions for services rendered in procuring bids for all or any portion of the State bonds issued under the provisions of Chapter 603 of the Statutes of 1913.

The State Treasurer shall not agree to pay a greater commission than ten per cent of the par value of the bonds sold. A commission shall not be paid for services rendered except to one who has procured and effected the sale and not until the money from the sale of the bonds has been paid into the State treasury. A commission shall not be paid on any sale of these bonds to any board, department or agency of the State authorized by law to purchase them.

If any resale of the bonds purchased by a board, department or agency is made, the provisions of this article as to entering into agreements to pay, and the payment of commissions, apply to resales as well as to original sales of these bonds.

1961. The commissions authorized by this article shall be paid out of the San Francisco harbor improvement fund, and the State Controller shall draw his warrants on the fund in favor of the person entitled to the commission. Sufficient money is hereby appropriated from the San Francisco harbor improvement fund for the payment of such commissions as and when they become due.

1962. The board shall by the collection of dockage, tolls, rents, wharves and other port charges collect a sum of money sufficient for the purposes of this article, over and above the amount limited by this part.

1963. This article does not prevent an original sale, or a resale, by any board, department or agency of the State, of any of these bonds without the payment of commissions.

CHAPTER 5. COMMISSIONS.

Article 1. In General.

1964. The board has not entered into a valid contract or obligation which creates a liability or authorizes the payment of money, until it is signed by all three of the commissioners, and countersigned by the secretary of the board. The board shall not make any contract involving the payment of

money, unless the amount then to the credit of the harbor improvement fund, plus any sums which may be derived from the sale of bonds, together with the revenue estimated to accrue up to the time of the maturity of the contract, over and above the current expenses of the board, is sufficient to meet the payments to become due thereon. The estimate of revenue shall be limited, as to time, to fifteen years.

Article 2. Harbor Embankment and Sea Wall Construction.

2000. When the board determines to construct any part of the sea wall, it shall advertise for sealed proposals. The advertisement shall be published in at least two daily newspapers in San Francisco for at least thirty days and the advertisement shall give a full and accurate description of the work to be done, the place where it is to be done, and the material which is to be used. On the day stated in the advertisement, the bids shall be opened in the presence of the bidders who are present, and the contract awarded to the lowest bidder. The successful bidder shall give a bond, with two or more responsible sureties, to be approved, if satisfactory, by the board, for the due performance of the work. The board's approval shall be indorsed on the bond.

If the bids are too high, the board shall reject them and advertise anew, in like manner as before.

If the second bids are also too high, it shall reject them likewise, and it may enter into a contract with responsible persons without giving further notice.

2001. Persons entering into a private contract with the board shall give a bond, pursuant to section 2000, for the faithful performance of the contract. The consideration agreed to be paid in any contract entered into without giving public notice shall be five per cent lower than the lowest responsible bid rejected.

2002. The work to be performed under any one contract shall not exceed one thousand lined feet of harbor embankment or sea wall. But the board may enter into as many contracts at the same time as are expedient, if the amount in the harbor improvement fund, together with the revenue estimated to accrue pursuant to section 2000 is sufficient to meet the contract price of the work, after deducting the current expenses of the board and the amount required for erosion and repair of the wharves, dredging docks and slips, and for incidental expenses. The State is not liable on these contracts for any deficiency in the harbor improvement fund.

2003. Separate contracts may be entered into for dredging a channel for the navigation of the water required for the construction of a harbor embankment. The provisions of the article relating to advertising for sealed proposals, and the

and opening of bids, and awarding of contracts shall be complied with in the letting of such work in separate contracts. The board may, if it will be more economical, dredge, with the dredge belonging to the State, the channel necessary for the reception of the stone used in the construction of the sea wall.

2004. A contractor who enters into a contract to construct any portion of the sea wall shall not be required to commence the work in less than thirty days after the award of the contract.

2005. The board shall, at least ten days previous to the holding of any meeting, as provided in this article, notify the Governor of the State, and the mayor of the city of San Francisco, of the time and place and object of the meeting, and request them to be present and take part. At the meeting the Governor and mayor are additional members of the board, with like powers and rights as the other members thereof, and contracts shall not be entered into under the authority of this article without the consent of either the Governor or mayor.

2006. The commissioners, and their appointees, shall not be interested in any contract for the erection or repairing of any work upon the premises under the jurisdiction of the board. Any commissioner or appointee who is so interested is guilty of a felony.

2007. Every proposal shall be accompanied by a certified check for an amount equal to five per cent of the amount of the proposal, made payable to the order of the secretary of the board. If the proposal is accepted and the contract awarded, and the bidder fails to execute the contract and give the bond required within six days after the award is made, then the sum mentioned in the check is liquidated damages for his failure, and shall be paid into the San Francisco harbor improvement fund. All contracts made pursuant to this act shall provide, under penalties of forfeiture of contract, at the option of the board, that Chinese or Mongolian labor not be employed on the work.

Article I. Extensions to Islands.

2008. The board may extend any wharf owned by the State and under the control of the board to any island within the navigable waters of the bay of San Francisco within the jurisdiction of the board, and it may lease the extension and its appurtenances for a term not to exceed twenty-five years, for an amount not less than the cost of construction. The same rules as to the lease shall be applied, in whole or in part, in payment of the cost of construction and the construction of the extension may be provided.

The lessee, his licensees and assigns, may have the right of ingress to and egress from the extension over the wharf, during the term of the lease, subject to the rules and regulations of the board.

2031. If an extension of a wharf is completed, the board shall collect the same tolls and charges for the use of any portions of the wharf as are charged or will be charged at other wharves. Any lease that is entered into shall expressly provide that tolls shall be paid on all goods moving onto, off or over the wharf and all dockage charges, rents, and other charges shall be paid for the use of any property in any way connected with or attached to the wharf or any extension thereof.

2032. The board shall not make any lease of any property under its jurisdiction which may deprive it at any time of the power to collect tolls, dockage charges and other similar port charges and any lease which is made by the board shall expressly make this reservation.

2033. Leases made pursuant to this article shall be made upon competitive bids after such public advertisements as the board deems sufficient, inviting proposals or bids therefor, and may be awarded to the person who will pay the amount required to construct the improvement, and execute and take a lease thereof for the shortest period of time, but the board may reject any and all bids.

Article 4. Construction.

2050. When the board determines that a new wharf shall be erected, or any other necessary improvement constructed, or repairs made, or dredging machines, pile drivers, scows, steam tugs, or any necessary machinery or material be obtained, the cost of which exceeds three thousand dollars, it shall advertise for sealed proposals during a period not less than ten days, in one or more of the daily newspapers in San Francisco.

2051. The advertisement shall contain a general description of the work to be done, the material to be used, the place where it is to be used, and it shall refer to specifications which shall contain a full and accurate description of the work to be performed, the material to be used, and where it is to be used. The specifications shall be kept in the office of the secretary of the board so that all persons may inspect them during the usual business hours of all days except days of festivity and holidays.

2052. Every proposal shall be accompanied by a certified check for an amount equal to five per cent of the amount of the proposal, made payable to the order of the secretary of the board. If the proposal is accepted and the amount

A dark, textured surface, possibly a book cover or endpaper, showing signs of wear and discoloration. The texture is grainy and uneven, with some lighter patches and darker areas. There are some small, light-colored specks and fibers visible throughout the material. The overall appearance is aged and worn.

The following information was obtained from the records of the
 United States Department of the Interior, Bureau of Land Management,
 and the United States Geological Survey, and is being furnished
 for your information. The information is being furnished to you
 for your information and is not to be used for any other purpose.
 The information is being furnished to you for your information and
 is not to be used for any other purpose.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

[illegible][illegible]

... made his permanent home for years prior to 1934 and on 11/11 in the office of the New York Police Department to the effect that when fifty years hence he was asked to say something in his country, he would be glad to speak in English and Italian and the conditions of Government of the United States are such that he can speak English and Italian and on the

those of the daily papers published in San Francisco for at least ten days.

2003. The notice shall state the property, or lot or portion thereof, or land to be leased, and that bids will be received by the board at a place and time designated in the notice, and that the lots and property shall be let to the highest and best bidder.

2004. All bids for leases shall set forth the purposes for which the property shall be leased, and this statement shall be embodied in the lease given by the board, with the condition that the property shall be used for those purposes only. The board may reject any and all bids.

CHAPTER 3. REPAIR AND CONSTRUCTION.

2005. The board shall:

(a) Construct the number of wharves required by the needs of commerce, and it shall locate them at points and upon lines which it determines are most suitable for the best interests of commerce.

(b) Repair and maintain all the wharves and thoroughfares required by the needs of commerce.

(c) Erect improvements necessary for the safe loading, lashing and unloading, and protection of all classes of merchandise, and for the safety and convenience of passengers passing into and out of San Francisco by water.

2006. For the purpose of repairing the wharves the board may purchase or construct pile drivers and the necessary machinery to be used therewith, and employ men for operating them.

2007. A wharf shall not be constructed in such a manner as to leave any slip or dock to be less than one hundred thirty-six feet wide at the most narrow point between the wharves.

2008. The board may purchase or construct and repair works and machinery to preserve piers and wharves, and for this purpose it may employ men and purchase and use dynamite or other materials. The purchase of dynamite may be made without advertising for bids.

2009. A harbor embankment or sea wall shall not be constructed outside of the following named points and line commencing at the point where the eastern boundary line of the Pacific reservation, extended in a northerly direction, intersects the three-fathom contour line shown upon the chart of the United States survey, and running thence in an easterly and northerly direction, upon straight or curved lines so as to approach as near as practicable the eastern shore of the water area shown as described in Chapter

7

When the Bureau of the President under the In-
struction of the President of the United States
is requested to the same, the Bureau of the President of the United States

...shall not be employed to develop, alter, or change the content of the State or to become a part of any

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power to receive persons and to take care of the persons
deposed in the same manner as is now provided for the reception
or maintenance of the prisoners of the State. It is hereby
authorized to receive and maintain persons wherever necessary
with the termination of its possession and control.

CHAPTER V. - MARINE LANDING.

Article I. - In General.

3050. The board may set apart and use any portion of the
water front and thoroughfare for the landing and loading of
grain and other merchandise and it may erect sheds and struc-
tures for storage. A roadway of not less than twenty feet in
width on the inner side of the water front thoroughfare shall
be left open for the passage of vehicles.

The board may fix the rules and prescribe the terms and
conditions on which these sheds and structures may be used
and the board has the same control over them as over the
wharves and other piers of the water front. The board shall
not assume to limit any of the duties or obligations of the
household.

3051. The board may make streets on the water front
except for landing railroad passengers and freight and may
it may construct docks, wharves and sheds for that purpose.
The board shall require a proper rule to be laid for these
streets and structures. The distance of these streets from
docking and wharves and the wharves on merchandise and
or of the care of passing through these streets is the same as
prescribed by the general regulations of the board.

3052. The board may assign for the exclusive use of the
authorities by officers of the Federal Government and the
various and safe landings at the officers' quarters, houses
with suitable premises near the landings for the use of the
officers of police and constables to suit their requirements.
The board shall make a suitable arrangement for the use
for the use of the landings and safe and structures provided.

3053. The board may also assign a suitable portion for the
use of the harbor police of San Francisco.

3054. The board may also assign a suitable place for a
housekeeping station for the exclusive use without compensation
of the quarantine and health officers of the city of San
Francisco.

3055. The board may also assign for the exclusive use of
steam boats, suitable ships in which passengers and
merchandise may be stored in secure the safe and convenient manner
and the safe landing and delivery of freight.

3056. The board may also assign suitable structures and
or landings for the exclusive use of vessels.

CHAPTER 2. TOLLS, WHARFAGE AND DOCKAGE

ARTICLE 1. TOLLS AND CHARGES

2000. The board may fix and regulate the rates of tolls for wharfe, storage, tolls, rent and other charges. It may collect an amount of revenue therefrom which will enable it to perform the duties required by this part.

2001. Any vessel which goes to anchor in any harbor or anchorage and lands goods or loads therefrom or takes a light for and shall pay to the board the tolls of wharfe fixed by authority of this part. Any vessel which discharges or receives any goods while anchored in any harbor or berth within the jurisdiction of the board shall pay on arrival the regular rates of wharfe.

2002. Any vessel which leaves any wharf, harbor, anchorage or berth without having first paid the tolls due is liable to pay double the regular rates plus the sum of ten dollars.

2003. Dockage shall not be collected on any vessel when it remains outside of a dock when it lies.

2004. A greater amount of wharfe shall not be collected on a vessel than is fixed by the board. The board may require the vessel to land its goods at a wharf authorized by this part and to receive receipts and receipts therefrom as a condition of landing its goods. When this part is violated by a vessel, the board may require the vessel to land its goods at a wharf authorized by this part and to receive receipts and receipts therefrom as a condition of landing its goods.

2005. Tolls on wharfe shall not be collected on any vessel when it lies in a harbor or anchorage, or when it is in a harbor or anchorage and its goods are not landed therefrom. Tolls on wharfe shall not be collected on any vessel when it is in a harbor or anchorage and its goods are not landed therefrom.

2006. The board may require a vessel to land its goods at a wharf authorized by this part and to receive receipts and receipts therefrom as a condition of landing its goods.

2007. The board of the board shall have the right to make rules of wharfe and wharfe and to enforce them. This section does not confer any right on the board to make rules of wharfe and wharfe.

2008. When any goods are landed on a wharf, the board may require the vessel to land its goods at a wharf authorized by this part and to receive receipts and receipts therefrom as a condition of landing its goods.

3103. Every master, agent, or owner of any vessel, and every owner, agent, or manager of any railroad car, who discharges from or receives on or allows to be discharged from or received on the vessel or car any merchandise or other article, before the wharfage thereon has been paid, is guilty of a misdemeanor, punishable by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one hundred days, or by both such fine and imprisonment.

The warrant of arrest may be discharged at any time before trial by the payment of the wharfage on the goods wrongfully discharged or received, together with the costs of the legal proceedings. A receipt for wharfage, signed by a wharfinger or other proper officer of the board is the only evidence of payment.

3104. The board may, by written permit, release a person from the obligation to deliver the statement required by this article, or to pay wharfage before the discharge or receipt of merchandise or other articles as required by this article if, before any part of the goods is discharged or received a proper and sufficient guaranty in writing is given to the board for the payment of all wharfage. This guaranty is an original obligation on the part of the guarantor, and no consideration need exist or be expressed other than the acceptance of the person.

3105. A person shall not place, or cause to be placed, any obstructions in the portion of the bay of San Francisco described in this part, nor upon any wharf or thoroughfare, without the consent of the board.

3106. Whenever any wharf or thoroughfare in the harbor of San Francisco is incumbered, or its free use is interfered with, by goods or other substance, whether loose, or built upon, or fixed to any wharf or thoroughfare, the board shall notify, in writing, the owner, agent, occupant, or person placing or keeping the obstruction thereon, to remove it within twenty-four hours after service of the notice. The notice may be served by a wharfinger, or the secretary or assistant secretary of the board.

3107. In case of failure to comply with the notice to remove the obstruction, the owner, agent, occupant, or person notified is liable to pay the board the sum of twenty-five dollars for each day during which the obstruction remains upon any wharf or thoroughfare. The board may remove any incumbering substance, and store it in a suitable, convenient, and safe place, and a sum equal to the amount of the expenses of the removal, together with all other necessary charges, shall be paid by the owner to the board, and is a lien on the substance until paid.

3108. Every person who collects any toll, wharfage, or dockage, or lands, ships, or removes any property upon or from any portion of the water front of San Francisco, or from or upon any of the wharves under the control of the board, without being by the board authorized so to do, is guilty of a misdemeanor.

3109. Every person, who, by false returns, or in any manner, avoids the payment of all or any portion of any tolls which may be due to any board of State harbor commissioners of the State of California, from any source or cause, as provided for by law and the rules and regulations of the board, is liable for and shall pay to the board twice the amount of tolls, and in addition the sum of ten dollars.

CHAPTER 9. STREETS.

3130. The board shall lay out and open along the water front line, a thoroughfare of the uniform width of two hundred feet, the inner line of which shall be parallel with the water front line, except that, its inner line between Market Street and Folsom Street shall correspond with the present line of East Street, and its inner line between Clay Street and Sacramento Street shall be a straight line drawn from the intersection of the north line of Clay Street, with the inner line of the thoroughfare to the intersection of the north line of Sacramento Street with the north line of Market Street extended, and its roadways and sidewalks shall conform to this deviation from its uniform width.

3131. The thoroughfare shall have a roadway of one hundred and eighty feet, and a sidewalk on its inner side of twenty feet in width. The roadway shall be constructed and kept in repair by the board. The sidewalk shall be constructed and kept in repair in the manner provided by law for the construction and repair of sidewalks on other streets of San Francisco.

3132. If the roadway or sidewalk is obstructed, the board shall cause the obstructions to be removed in the manner provided by this part.

The board may assign the use of spaces along the water front for offices and baggage rooms, and for scales for weighing freight, and may charge therefor a reasonable rent. The board has jurisdiction over the thoroughfare for the purposes of construction, repair, removal of obstructions, and collection of dockage, wharfage, rents, and tolls, and for commercial purposes. A franchise or privilege for a railroad track along the thoroughfare shall not be granted by the supervisors of San Francisco.

3133. The board may grant to the county of San Francisco the right to construct sewers along, through, or across any of the property under the jurisdiction of the board.

3134. The board may also acquire lands needed for the purposes of this chapter by purchase or it may exchange therefor upon an equitable basis any portion of the property of the State, under the jurisdiction of the board, lying inland of the inshore line of the thoroughfare or water front streets, or it may sell any of this inland property, and apply the proceeds to the purchase of any needed land.

A full record of the proceedings of the board in this regard shall be entered upon its minutes and a sworn statement of all exchanges, sales, purchases and other transactions shall be filed with the Secretary of State.

The statement shall show in full the payments and receipts itemized so as to exhibit definitely the price of each parcel of land transferred and in case of exchange, to describe definitely the parcels exchanged.

3135. If it is necessary to take any land for the purpose of widening any street, the board may prosecute proceedings therefor, in conformity with the provisions of Part III, Title VII, of the Code of Civil Procedure, and pay such compensation as may be assessed for the land taken. This power is concurrent with and cumulative to other powers of the board.

3136. The thoroughfare, sea wall, and contemplated streets are a public use. The right of eminent domain may be exercised by the board, in the name of the people of the State, for the estates and rights, and in the manner provided in Part III, Title VII, of the Code of Civil Procedure in the laying out and opening of this thoroughfare. The board may pay, out of the harbor improvement fund, any compensation and damages assessed in these proceedings.

3137. Whenever any section of the sea wall and thoroughfare is constructed and ready for use, the board of supervisors of the city of San Francisco, shall cause the streets of the city to be extended and constructed, so as to intersect the section; and if any such streets have been widened by the Board of State Harbor Commissioners, they shall be contracted to their original width before widening, and be so extended.

When extended, they are public streets, and their roadways and sidewalks, to the intersection of the thoroughfare, shall be constructed and kept in repair in the manner provided by law for the construction and repair of the public streets of San Francisco.

3138. The board in addition to its general jurisdiction as defined in this part, may use for loading and landing merchandise, with a right to collect dockage, wharfage and tolls thereon, any portion of the streets of San Francisco, ending or fronting upon the waters of the bay which may be so used without obstructing them as thoroughfares.

CHAPTER 10. STATE BELT RAILROAD.

3150. The board may locate, construct, maintain, operate and extend the State railroad, and railroad tracks, through, over, under and upon any State lands, or the water front or lands within its jurisdiction, or through, over, under and upon any streets, avenues, alleys, lanes, places or property of the city of San Francisco, or lands or property of the United States of America, or private property in San Francisco, in which and where it may then have a license, permission, easement or right of way therefor, together with all necessary trackage, switches, spurs, turnouts, fills, cuts, tunnels, trestles, bridges, drawbridges, signals and other appliances, appurtenances and incidents necessary to make the same complete and convenient for use.

3151. The board may obtain from Panama-Pacific International Exposition Company, a corporation, an assignment of its rights under an act of Congress approved June 28, 1912, entitled "An act granting a right of way to the Panama Pacific International Exposition Company, or such successors or assigns as may be approved by the Secretary of War, across the Fort Mason Military Reservation in California."

3152. It may also obtain the approval of the Secretary of War of such assignment, of the location of a railroad and tunnel upon and across this reservation, and of the establishment of regulations for their use.

3153. The board may construct a railroad and tunnel upon and across the reservation as a part of and incident to the State railroad. It shall impose tolls, charges and compensation for passage through the tunnel upon all freight and passenger cars which will provide, within a limited time, for the repayment of the cost of the construction of the tunnel. These tolls and charges shall be in conformity with the requirements and subject to the approval of the Secretary of War. They shall be collected until the cost of construction of the tunnel is repaid, and are exclusive of and in addition to the ordinary compensation for the use of the railroad.

3154. The board may obtain from the city of San Francisco, proper and necessary grants, licenses or permission to extend, construct, maintain and operate the State railroad along, over and upon such public streets, avenues, alleys or property of the city as are necessary for the extension of the State railroad.

3155. The board may acquire rights of way and lands necessary for such extension from the owners of private property, either by grant or by condemnation proceedings; and in that behalf the provisions of law relating to the exercise of the right of eminent domain shall apply and inure to the benefit of the board, and to such proceedings.

3156. The board may permit any person to operate passenger street cars over and through the railroad and tunnel for such time and under rules and regulations and compensation as the board determines.

3157. The board may obtain license and permission from the United States Government to extend, locate, construct, operate and maintain the railroad in and through the Presidio Reservation in the city in such location and subject to regulations prescribed by the United States Government.

3158. The board shall not construct any railroad along and upon any open canal extending inland from the water front. But it may, when a water front railroad is constructed by it, construct it across the outlet of such open canal.

3159. The board may, when the commerce of the port of San Francisco requires, maintain passenger service upon the State railroad located upon the Embarcadero in San Francisco. The board may make extensions of the service through, over, under and above the lands and water front within its jurisdiction, as public convenience and necessity require.

3160. If the establishment and maintenance of railroad passenger service is, after careful investigation, found by the board to be impracticable, or not feasible, it may establish or maintain other passenger service or the means, facilities, or modern street improvements by which or over which other passenger service can be operated and maintained by the board, or by persons authorized by the board.

3161. The board may acquire and furnish facilities which are reasonable and necessary for the accommodation of passenger traffic upon the Embarcadero.

3162. Charges for passenger service shall be determined by the board. These charges shall not be greater than are necessary to obtain revenue which, with the other revenues of the port of San Francisco, are sufficient for the maintenance of the commerce of the port, including the maintenance of the passenger service.

3163. The board may obtain added powers under existing licenses, grounds, permits or easements, and may obtain licenses, grounds, permits, or easements, necessary to secure the fulfillment of the object of this chapter.

3164. When any trainman or engineman, employed on any railroad under the control of the board, works more than eight hours in any twenty-four hours, as the employee of such railroad, he shall receive one and one-half times as much compensation for every hour more than eight as he does for each hour of the first eight.

3165. The board may lay down the number of tracks along and on any portion of the water front, which the needs of commerce may require, and it may permit their use by any person under rules, regulations, and compensation determined

by the board. The board may make agreements with persons owning spur or industry tracks relative to the use by the State of such tracks as the board may determine are necessary. Special privileges shall not be given to any person.

This section does not apply to or restrict the use of any premises leased for terminal facilities under or by reason of Chapter 171, page 194, of the Statutes of 1895, by the board. The board may permit the construction of switches leading from such railroad tracks to any warehouse or place of business.

CHAPTER 11. POLICE REGULATIONS.

Article 1. In General.

3200. Every master, agent, or owner of any vessel, who does not obey the lawful orders or directions of the chief wharfinger in any matter pertaining to the regulations of the harbor, or the removal or stationing of any vessel, is guilty of a misdemeanor, punishable by a fine not to exceed three hundred dollars, or by imprisonment not to exceed one hundred days.

3201. Every person, who deposits, or causes to be deposited, in the waters of the harbor of San Francisco, which are subject to the jurisdiction of the board, any substance which will sink and form an obstruction to navigation, without first obtaining permission, in writing, of the board, which permission shall be recorded by the secretary and shall describe, with an ordinary degree of certainty, the place where the deposit may be made, is guilty of a misdemeanor, punishable by a fine of not less than one hundred nor more than five hundred dollars, or imprisonment for not less than thirty nor more than ninety days.

3203. The municipal court of the city of San Francisco has jurisdiction to try all cases of misdemeanor arising under this part.

3204. The police commission of the city of San Francisco shall appoint as special policemen, such number of wharfingers and toll collectors as the Board of State Harbor Commissioners requests, in writing. The police commission shall furnish these special policemen with the usual badge of office, which shall be paid for by the Board of State Harbor Commissioners; the appointments shall be renewed once in each year. The jurisdiction of these special policemen is coextensive with the premises described in this part, and their terms of office.

Article 2. Quarantine.

3220. The quarantine grounds of the bay and harbor of San Francisco are at the anchorage of Sausalito.

3221. Shipmasters bringing vessels into the harbor of San Francisco, and masters, owners, or consignees having vessels

in the harbor which have on board any cases of Asiatic cholera, smallpox, yellow fever, typhus fever, or ship fever, shall report the same, in writing, to the quarantine officer before landing any passengers, casting anchor, or coming to any wharf, or as soon thereafter as they become aware of the existence of any of these diseases on board their vessels.

3222. A captain or other officer in command of any vessel sailing under a register, arriving at the port of San Francisco, and any owner, consignee, agent, or other person having charge of such vessel, shall not under a penalty of not less than one hundred nor more than one thousand dollars, land, or permit to be landed, any freight, passengers, or other persons until he has reported to the quarantine officer, presented his bill of health, and received a permit from that officer to land freight, passengers, or other persons.

3223. Every pilot who conducts into the port of San Francisco, any vessel subject to quarantine or examination by the quarantine officer, shall:

(a) Bring the vessel no nearer the city than is allowed by law.

(b) Prevent any person from leaving, and any communication being made with the vessel under his charge, until the quarantine officer has boarded it and given the necessary orders and directions.

(c) Be vigilant in preventing any violation of the quarantine laws, and report to the quarantine officer without delay, all violations that come to his knowledge.

(d) Present the master of the vessel with a printed copy of the quarantine laws, unless the master has one.

(e) If the vessel is subject to quarantine, by reason of infection, place at the masthead a small yellow flag.

3224. Every master of a vessel subject to quarantine or visitation by the quarantine officer, arriving in the port of San Francisco, who fails to do any of the following:

(a) Proceed with and anchor his vessel at the place assigned for quarantine, when legally directed so to do.

(b) Submit his vessel, cargo, and passengers to the quarantine officer, and furnish all necessary information to enable that officer to determine to what quarantine or other regulations they ought respectively to be subject.

(c) Report all cases of disease and of deaths occurring on his vessel, and to comply with all the sanitary regulations of the bay and harbor—

Is liable in the sum of five hundred dollars for each such failure.

3225. All vessels arriving off the port of San Francisco from ports which have been legally declared infected ports, and all vessels arriving from ports where there is prevailing,

at the time of their departure, any contagious, infectious, or pestilential diseases, and all vessels with decaying cargoes, or which have unusually foul or offensive holds, are subject to quarantine, and shall be, by the master, owner, pilot, or consignee, reported to the quarantine officer without delay. Such vessels shall not cross a line drawn from Meiggs' Wharf to Alcatraz Island until the quarantine officer has boarded it and given the order required by law.

3226. The quarantine officer shall board every vessel, subject to quarantine or visitation by him, immediately on its arrival, make such examination and inspection of vessel, books, papers, or cargo, or of persons on board, under oath, as he may judge expedient, and determine whether the vessel should be ordered to quarantine, and if so, the period of quarantine.

3227. A captain or other officer in command of any passenger-carrying vessel of more than one hundred and fifty tons burden, or of any vessel of more than one hundred and fifty tons burden, having passengers on board, and any owner, consignee, agent, or other person having charge of such vessels, shall not, under a penalty of not less than one hundred dollars nor more than one thousand dollars, land or permit to be landed, any passenger from the vessel until he has presented his bill of health to the quarantine officer and received a permit from that officer to land such passenger, except in cases in which the quarantine officer finds it safe to give the permit before seeing the bill of health.

3228. The following fees may be collected by the quarantine officer: For giving a permit to land freight or passengers, or both, from any sailing vessel of less than five hundred tons burden, from any port out of this State, two dollars and fifty cents; over five hundred and under one thousand tons burden, five dollars; each additional one thousand tons burden or fraction thereof, an additional two dollars and fifty cents; for steam vessels, of one thousand tons burden or less, five dollars, and two dollars and fifty cents for each additional one thousand tons burden or fraction thereof; but vessels not propelled in whole or in part by steam, sailing to and from any port of the United States, or territories, and whaling vessels, entering the harbor of San Francisco, are excepted from the provisions of this section.

3229. The board of health may enforce compulsory vaccination on passengers in infected vessels or vessels coming from infected ports.

3230. The board of health may provide suitable hospitals, to be situated at or near Sausalito, and furnish and supply them with nurses and attendants, and remove thereto all persons afflicted with cholera, smallpox, yellow fever, typhus fever, or ship fever.

3281. Every master of a vessel subject to quarantine or visitation by the quarantine officer, who fails to do any of the following:

(a) Proceed with and anchor his vessel at the place assigned for quarantine, at the time of his arrival.

(b) Submit his vessel, cargo, and passengers to the examination of the quarantine officer, and to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject.

(c) Remain with his vessel at the quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any health officer, by virtue of authority given him by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew—

Is guilty of a misdemeanor, punishable by imprisonment for not exceeding one year, or by fine not exceeding two thousand dollars, or both.

Sec. 2. Section 10004 is hereby added to the Harbors and Navigation Code, to read as follows:

10004. The following acts, together with all acts amendatory thereof and supplementary thereto, are hereby repealed.

Year	Ch.	Pg.
1851	: 49:	313
1851	: 52:	315
1857	: 98:	100
1863	: 306:	406
1863-4	: 149:	138
1863-4	: 204:	260
1863-4	: 391:	446
1865-6	: 309:	349
1865-6	: 628:	853
1867-8	: 223:	217
1867-8	: 233:	234
1867-8	: 315:	356
1867-8	: 327:	373
1867-8	: 340:	408
1867-8	: 341:	409
1867-8	: 541:	715
1869-70	: 175:	241
1869-70	: 490:	717
1869-70	: 535:	799
1871-2	: 495:	728
1871-2	: 552:	797
1871-2	: 629:	926
1873-4	: 451:	663
1873-4	: 452:	664

Year	Ch.	Pg.
1873-4	: 659:	910
1873-4	: 661:	912
1875-6	: 79:	54
1875-6	: 232:	305
1877-8	: 219:	263
1880	: 18:	10
1889	: 257:	388
1891	: 42:	27
1891	: 179:	261
1891	: 189:	270
1895	: 89:	79
1901	: 259:	809
1903	: 66:	73
1913	: 217:	372
1913	: 229:	383
1917	: 499:	585
1917	: 506:	625
1919	: 168:	254
1919	: 289:	470
1921	: 781:	1413
1921	: 906:	1721
1923	: 162:	376
1925	: 55:	123
1933	: 806:	2140

Sec. 3. Section 10006 is hereby added to the Harbors and Navigation Code, to read as follows:

10006. The following sections of the Penal Code are hereby repealed:

842

843

Sec. 4. Section 10005.5 is hereby added to the Harbors and Navigation Code, to read as follows:

10005.5. The following sections of the Political Code are hereby repealed:

2520	2581	2549
2521	2532	2550
2521A	2536	2551
2522	2537	2552
2523	2538	3004
2524	2539	3013
2524a	2540	3014
2524b	2541	3015
2524c	2542	3016
2524d	2543	3017
2525	2544	3018
2526	2545	3019
2526a	2545a	3020
2527	2546	3021
2527a	2547	3022
2528	2548	

Sec. 5. This act shall become effective if a Harbors and Navigation Code is enacted by the fifty-second Legislature.

STATE OF CALIFORNIA

State Employees' Retirement Act

Enacted, Statutes 1931, Chapter 700
Amended, Statutes 1933, Chapter 473
Amended, Statutes 1935, Chapter 152
Amended, Statutes 1935, Chapter 850
Amended, Statutes 1937, Chapter 806
Amended, Statutes 1937, Chapter 858
Amended, Statutes 1937, Chapter 859



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STATE OF CALIFORNIA

STATE EMPLOYEES' RETIREMENT ACT

Passed under authority conferred on Legislature by constitutional amendment adopted by people at election of November 4, 1930 (Art. IV, Sec. 22a).

Act approved by Governor June 9, 1931 (Stats. 1931, Ch. 700). Amendments approved by Governor May 22, 1933 (Stats. 1933, Ch. 473; Stats. 1935, Ch. 152; Stats. 1935, Ch. 850; Stats. 1937, Ch. 806; Stats. 1937, Ch. 858; Stats. 1937, Ch. 859).

An act to provide for the creation, establishment, and adjustment with other such systems, of a retirement system for employees of the State of California, and make an appropriation therefor.

[Amended, Statutes 1933, Chapter 473.]

The people of the State of California do enact as follows:

SECTION 1. The purpose of this act is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits.

Definitions

SEC. 2. The following words and phrases used in this act, unless a different meaning is plainly indicated in the context, shall have the following meanings:

SEC. 3. "Retirement system" shall mean the "State Employees' Retirement System" created by section 25 of this act;

SEC. 4. "Employee" shall mean any person in the employ of the State of California whose compensation, or at least that portion of such compensation which is provided by the State, is paid out of funds directly controlled by the State, and, for the purpose of this act, any person in the employ of the university whose compensation, or at least that portion of such compensation which is provided by the university, is paid out of funds directly controlled by the university, excluding all other political subdivisions, municipal, public and quasi public corporations; in addition to other funds so controlled, funds deposited in the State treasury and disbursed therefrom in payment of compensation, regardless of the source from which they were derived, shall be considered as directly controlled by the State for the purposes of this section;

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1937, Chapter 806.]

SEC. 5. "Member" shall mean any person included in the membership of the retirement system set forth in sections 26, 27, 28 and 28a, and not excluded in sections 29 to 40, inclusive, of this act;

[Amended, Statutes 1935, Chapter 850.]

SEC. 6. "Board" shall mean the "Board of Administration" created in this act;

SEC. 7. "Retirement fund" shall mean the "State employee retirement fund" created and established in section 41 of this act;

SEC. 8. "State service" shall mean service rendered as an employee or officer, appointed or elected, of the State for compensation and, for the purposes of this act, a member shall be considered as being in the "State service" only while he is receiving compensation from the State for such service, except as provided in section 47 hereof;

[Amended, Statutes 1935, Chapter 152.]

SEC. 8a. "Highway patrol service" shall mean service rendered as a member of the California Highway Patrol, or as a member, on or after September 1, 1923, of the highway patrol of any county. For the purpose of this act, a member shall be considered as being in the "highway patrol service" only while he is receiving compensation from the State or county for such service, except as provided in section 47 hereof;

[Added, Statutes 1937, Chapter 858.]

[Amended, Statutes 1937, Chapter 859.]

SEC. 9. "Prior service" shall mean the State service, as defined herein, rendered before the first day of January, 1932, and allowable as provided in section 49 of this act;

[Amended, Statutes 1933, Chapter 473.]

SEC. 10. "Continuous service" as applied to "prior service" shall mean all prior service, regardless of interruptions in such service, and as applied to service as a member shall mean uninterrupted employment by the State, except as provided in section 47 hereof, and, except that when for any cause whatever, a member discontinues State service but subsequently reenters such service within three years from the date of the discontinuance, such interruption shall not be deemed to break the continuity of service;

[Amended, Statutes 1935, Chapter 152.]

SEC. 11. "Beneficiary" shall mean any person in receipt of pension, annuity, retirement allowance, death benefit or any other benefit provided by this act;

SEC. 12. "Compensation" shall mean the remuneration paid in cash out of funds controlled by the State plus the monetary value, as determined by the Board of Administration, of board, lodging, fuel, laundry and other advantages of any nature furnished by the State to a member in payment for his services;

SEC. 13. "Compensation earnable" by a member shall mean the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, it being assumed that during any absence said member was in the position held by him at the beginning of the absence and that prior to entering State service he was in the position first held by him in such service, but such "compensation earnable" shall not exceed four hundred sixteen dollars and sixty-six cents per month;

[Amended, Statutes 1935, Chapter 850.]

SEC. 14. "Final compensation" shall mean the average annual compensation earnable by a member during the five years immediately preceding his retirement;

SEC. 15. "Regular interest" shall mean interest at four per centum per annum, compounded at each June thirtieth, subject to section 51 hereof, plus such additional interest as the board may credit from year to year in accordance with the provisions of this act;

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1937, Chapter 806.]

SEC. 16. "Normal contributions" shall mean contributions by members under the provisions of sections 65 to 67, both inclusive, of this act;

[Amended, Statutes 1937, Chapter 806.]

SEC. 17. "Additional contributions" shall mean contributions by members under the provisions of section 68 of this act;

SEC. 18. "Accumulated normal contributions" shall mean the sum of all the normal contributions standing to the credit of a member's individual account, together with the regular interest thereon;

SEC. 19. "Accumulated additional contributions" shall mean the sum of all the additional contributions standing to the credit of a member's individual account, together with regular interest thereon;

SEC. 20. "Accumulated contributions" shall mean accumulated normal contributions plus any accumulated additional contributions standing to the credit of a member's account;

SEC. 21. "Pension" shall mean payments for life derived from contributions made from State controlled funds as provided in this act;

SEC. 22. "Annuity" shall mean payments for life derived from contributions made by a member as provided in this act;

SEC. 23. "Retirement allowance" shall mean the pension plus the annuity;

SEC. 23a. "Death allowance" shall mean payments for life, or until remarriage, or until the youngest child shall attain the age of eighteen years, as provided in section 100 hereof;

[Added, Statutes 1937, Chapter 806.]

SEC. 23b. "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board, and interest at the rate of four per centum per annum, compounded annually, subject to section 51 hereof; and

[Added, Statutes 1937, Chapter 806.]

SEC. 24. "Fiscal year" shall mean any year commencing with July first and ending with June thirtieth next following.

SEC. 25. A retirement system is hereby created and established to become effective January 1, 1932, and to be known as the "State Employees' Retirement System."

Membership

SEC. 26. Except as herein expressly excluded from membership all employees shall become members of the retirement system as follows:

SEC. 27. From and after the date this system becomes effective,

every employee who has rendered one-half year of continuous service is a member of the retirement system, and every other employee shall become a member after the completion of six months of State service uninterrupted by a break of more than one month, provided that an employee who has entered or enters State service after January 1, 1933, as the result of the assumption by the State of a governmental function previously exercised by a political subdivision thereof and under which function he was employed for at least such six months' period immediately preceding such assumption, shall be considered a member of the system and after the date of said entry into State service.

[Amended, Statutes 1933, Chapter 473.]

SEC. 28. Every employee who reenters State service after the date this system becomes effective, and who, prior to such reentry has completed six months of State service, uninterrupted by a break of more than one month, shall become a member of the retirement system upon such reentry.

[Amended, Statutes 1933, Chapter 473.]

SEC. 28a. Persons who are members of the California Highway Patrol become and remain members of the retirement system in the same manner as in the case of other eligible State officers or employees except that when any such person is disabled or killed by injury or illness arising out of and in the course of such duties, such person, in respect to such disability or death, is deemed a member of the retirement system while in State service prior to the completion of the six months of service referred to in section 27, to the same extent as if such six months of service were completed prior to such disability or death.

"Member of the California Highway Patrol," and "member of the highway patrol of a county," for the purpose of the retirement system, includes persons employed in the Motor Vehicle Department or by a county in connection with its highway patrol function, respectively, whose principal duties consist of active law enforcement service and excludes such persons whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise clearly not falling within the scope of active law enforcement service, even though such person is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement service.

[Added, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 858.]

Exemptions from Membership

SEC. 29. The following employees shall not become members of the retirement system:

SEC. 30. Elective officers, provided that any person so excluded from membership, who later becomes a member hereof, shall have the option of making contributions to the retirement system in the amount which he would have contributed had he not been so excluded, and shall then receive credit for prior service in the same manner as if he had not been so excluded. If he shall affirmatively exercise the option

the contributions of the State because of his membership, shall be the same as they would have been had he not been so excluded.

[Amended, Statutes 1937, Chapter 806.]

SEC. 31. Inmates of State institutions who are allowed compensation for such service as they are able to perform;

SEC. 32. Persons in State institutions principally for the purpose of training, but who receive compensation;

SEC. 33. Persons employed under contract for a definite period and for the performance of specific duties requiring professional or high technical skill;

SEC. 34. Employees serving on a part-time basis;

SEC. 35. Persons in State service on June 30, 1933, or prior thereto, whose compensation equals or exceeds four hundred sixteen dollars and sixty-six cents per month, and who file or have filed, with the Board of Administration an election not to become members;

[Amended, Statutes 1933, Chapter 473.]

SEC. 36. Persons directly appointed, without the nomination of any officer or board, by the Governor, and who do not file with the Board of Administration an election in writing to become members;

SEC. 37. All public school teachers who fall within the provisions of any teachers' retirement system except teachers in schools entirely or partially supported by State controlled funds, and whose entire compensation for full time teaching is paid directly to them by the State, at least fifty per cent of such compensation coming out of State appropriations;

SEC. 38. Persons who, if the retirement system did not exist, would be subject to the provisions of Part IV of Division V of the School Code and who file requests for exemption with the board within ninety days after becoming employed in a status in which they will become eligible for membership in the retirement system.

Any person who was employed in a position which, if the retirement system had not existed, would have been subject to the provisions of Part IV of Division V of the School Code, but who was by the provisions of this act made a member of the retirement system, may withdraw from the retirement system and again become subject to the provisions of Part IV of Division V of the School Code by filing an election so to do with the Board of Administration on or before December 31, 1933. Upon the receipt of such election by the Board of Administration, said person shall cease to be a member of the retirement system and shall become subject to the provisions of Part IV of Division V of the School Code. Said person, solely for the purposes of section 75 of this act, shall be considered as permanently separated from State service. The Public School Teachers Retirement Salary Fund Board shall count as part of the service required for retirement under Part IV of Division V of the School Code, service rendered by such person as a member of the retirement system, and also service rendered by such person as a member of the retirement system whose termination of membership therein results from separation from State service because of the abolition of the position he holds in State service, if such service would have been so counted had not the act creating the retirement

system become effective, and if, also, such person pays to the said retirement salary fund the amounts he would have paid had he never been a member of the retirement system.

[Amended, Statutes 1933, Chapter 473.]

SEC. 38a. All State employees coming within the meaning of the act, who are beneficiaries under the pension and retirement annuity system of the University of California.

[Amended, Statutes 1933, Chapter 473.]

SEC. 38b. Persons who are members of any other retirement pension system supported wholly or in part by funds of the United States Government, any State government or political subdivision thereof and who are receiving credit in such other system for service it being the purpose of this section to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstance. Any member of the retirement system who, because of his employment by the State, shall be required to become a member of any such other system, shall be considered solely for the purposes of section 75 of this act as permanently separated from State service. The accumulated contributions of any member who shall be required after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 100 hereof. Contributions to the retirement fund under sections 108 and 109 hereof on the basis of compensation earned by members at the effective date of termination of membership herein because of membership in such other system, shall be repaid to the fund from which said contributions were made.

For the purpose of this section, persons who merely are receiving pensions or retirement allowances, or other payments, from any source whatever, on account of service rendered to other than the State when such persons were not in State service, shall not be considered because of such receipt, members of any other retirement or pension system.

[Added, Statutes 1933, Chapter 473.]

[Amended, Statutes 1937, Chapter 806.]

Change of Status

SEC. 39. It shall be the duty of the head of each office or department to give immediate notice in writing to the Board of Administration of the change in status of any member in his office or department resulting from transfer, promotion, leave of absence, resignation, retirement, statement, dismissal or death. The head of each office or department shall furnish such other information concerning any member as the board may require.

Termination of Membership

SEC. 40. Each member and each person retired shall be subject to all the provisions of this act and to the rules and regulations adopted by the Board of Administration. Any person who is retired and any person who is credited with less than twenty years of State service

who renders less than five years of service in any period of ten consecutive years, or withdraws more than one-fourth of his normal contributions, ceases to be a member.

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1935, Chapter 152.]

Fund Created

SEC. 41. A fund is hereby created and established to be known as the "State employees' retirement fund" and shall consist of all the cash, securities or other assets paid into it in accordance with the provisions of this act.

Board of Administration Created

SEC. 42. A board of administration of said retirement system is hereby created, consisting of one member of the State Personnel Board other than the Director of Finance, to be selected by and to serve at the pleasure of the State Personnel Board, the Director of Finance, three members elected, under the supervision of the board of administration, from the active members of the retirement system, which shall not include retired members, an official of a life insurance company and an officer of a bank who shall be appointed by the Governor within thirty days of the taking effect of this act. In the election of the three members from the active members of the system, the ballots cast shall be delivered to and canvassed by the Secretary of State. The term of office of the five members, other than ex officio members, shall be four years expiring on January fifteenth, and the present terms of said five members, regardless of whether said terms be filled, shall be unchanged by this section. Vacancies shall be filled by appointment by the Governor, from the class in which the vacancy occurs and for the unexpired term or until the election, prior to the expiration of the term, of an active member of the retirement system to fill the vacancy, if it shall have occurred in that class.

[Amended, Statutes 1935, Chapter 152.]

SEC. 43. The board may establish such rules and regulations as it deems proper; shall elect one of its members president, and shall appoint and fix the compensation of a secretary, who shall have the power to administer oaths, and other necessary employees in accordance with the classifications made by the Civil Service Commission. It shall maintain its office in the city of Sacramento. All expenses of the administration of this act shall be a charge on the general fund of the State. The members of the board shall serve without compensation, but they shall be reimbursed for actual and necessary expenses incurred through service on the board out of the appropriation for the administration of this act.

[Amended, Statutes 1937, Chapter 806.]

SEC. 44. The board shall determine who are employees within the meaning of this act and shall be the sole authority and judge under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system and shall have exclusive control of the administration and investment of the

retirement fund. As soon as practical after the close of each fiscal year it shall file with the Governor a report of its work for such fiscal year.

[Amended, Statutes 1933, Chapter 473.]

SEC. 45. Subject to the following and to all other provisions of this act, and such rules and regulations as it may adopt in pursuance thereof, the board shall determine and may modify allowances for service and disability.

Year of Service

SEC. 46. It shall fix and determine how much service rendered in any fiscal year shall be the equivalent of a year of service and parts thereof, but shall credit one year for two hundred fifty or more days of service rendered by employees on a per diem basis and one year for ten months or more of service rendered by employees on a monthly basis, but not more than one year for all service in any fiscal year.

Absence from Service

SEC. 47. Time during which a member is absent from State service without compensation shall not be allowed in computing service; except that time during which a member is absent from State service by reason of service in the military or naval forces of the United States in any war involving the United States as a belligerent, or in other national emergency, shall be considered as time spent in State service, for the sole purpose of qualification for retirement, but not calculation of benefits, under the retirement system. Any member so absent shall have the right to contribute to said system, at times and in a manner fixed by the board of administration, amounts equal to the contributions which would have been made to the system by both him and the State on the basis of his compensation earnable during the time he is so absent. If he does so contribute, he shall receive credit for State service for such time in the same manner as if he had not been absent from State service.

[Amended, Statutes 1935, Chapter 152.]

SEC. 48. Each employee shall file with the Board of Administration such information affecting his status as a member of the retirement system as the board may require.

Prior Service

SEC. 49. Credit for prior service shall be granted to each person who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1932, or within three years after last rendering prior service, the prior service credited, however, to be one-half year less than the total prior service rendered by him. Prior service so credited shall be the basis for a retirement allowance or benefit as provided in this act only if the membership in the retirement system continues unbroken until retirement on a retirement allowance or until the granting of such other benefit, provided that termination of membership by withdrawal of accumulated contributions followed by the redeposit of such contribu-

tions upon reentrance into State service as herein provided shall not constitute a break in membership, but this section shall not be construed to entitle any person to credit as prior service for time during which he was not in State service as defined in this act.

[Amended, Statutes 1933, Chapter 473.]

Board of Administration—Powers and Duties

SEC. 50. The management and control of the retirement system shall be vested in the Board of Administration, and it shall exercise the following powers and perform the following duties:

SEC. 51. It shall keep in convenient form such data as shall be necessary for the actuarial valuation of the retirement fund created by this act. On July 1, 1932, and at the end of every four-year period thereafter, it shall cause to be made an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries under the provisions of this act, and shall further cause to be made an actuarial valuation of the assets and liabilities of the retirement fund herein created, and from time to time shall determine the rate of interest being earned on the retirement fund. Upon the basis of such investigation, valuation, and determination, said board shall adopt such mortality, service and other tables and such interest rate, in lieu of the interest rate specified herein, or any of such items as it shall deem necessary, and shall make such revision in rates of contribution of members as it may deem necessary to comply with the provisions of sections 65 and 65a hereof. No adjustment shall be included in the new rates for time prior to the effective date of such revision.

[Amended, Statutes 1937, Chapter 806.]

SEC. 52. It shall credit contributions of members, of beneficiaries and of the State with interest at the rate of four per centum per annum, compounded at each June thirtieth, subject to section 51 hereof. At the end of each fiscal year, beginning with the second fiscal year of the operation of the retirement system, it may credit to all contributions held in the retirement fund at June thirtieth of the then current fiscal year, such interest in excess of the four per centum provided herein as it may deem proper in the light of the earnings on the retirement fund during such fiscal year, but such additional interest credited during any fiscal year shall not be greater than the excess of said earnings over the interest otherwise credited to contributions during that year. Interest at the rate of four per centum per annum, compounded annually, subject to section 51 hereof, shall be used in the calculation of benefits under any mortality table adopted by the board, regardless of any additional interest allowed on contributions under this paragraph.

[Amended, Statutes 1937, Chapter 806.]

SEC. 53. In addition to other records and accounts, it shall keep such records and accounts as may be necessary to show at any time:

SEC. 54. The total accumulated contributions of members;

SEC. 55. The total accumulated contributions of retired members less the annuity payments made to such members;

SEC. 56. The accumulated contributions of the State held for the benefit of members on account of service rendered as members of the retirement system;

SEC. 57. All other accumulated contributions of the State, which shall include the amounts available to meet the obligation of the State on account of benefits that have been granted to retired employees and on account of prior service of members;

SEC. 58. In addition to rendering the annual report to the Governor required by section 44 of this act, it shall cause to be published annually a financial statement showing an actuarial valuation of the assets and liabilities of the retirement system created by this act and a statement as to the accumulated cash and securities in the retirement fund as certified by the State Controller, but until all prior service is verified, the Board of Administration may omit from the financial statement published annually, assets and liabilities resulting from such prior service, and may include assets and liabilities on account of service rendered as members in amounts equal only to accumulated contributions held on account of such service.

[Amended, Statutes 1933, Chapter 473.]

SEC. 59. The retirement fund shall be managed as follows:

SEC. 60. The Board of Administration shall have exclusive control of the administration and investment of said fund, subject to the restriction that no investment shall be made except upon the affirmative vote of the Director of the Department of Finance and at least three other members of the Board of Administration, and subject also to the terms, conditions, limitations and restrictions imposed by the laws of the State of California upon savings banks in the making of investments by savings banks.

SEC. 61. The Board of Administration shall deposit monthly in the State treasury all amounts received by it as provided in section 44.

SEC. 62. The State Treasurer shall be the custodian of the retirement fund, subject to the exclusive control of the Board of Administration as to the administration and investment thereof. All payments from said fund shall be drawn from the fund upon warrants drawn by the Controller of the State, upon demands made by the Board of Administration.

SEC. 63. Interest earned on any cash deposit in a bank by the State Treasurer and income on other assets constituting a part of the said fund shall be paid into said fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during said year shall be retained in said fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

[Amended, Statutes 1937, Chapter 806.]

Borrowing Prohibited

SEC. 64. Except as herein provided, no member and no employee of the Board of Administration shall have any interest, direct, indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the said board directly or indirectly, for himself or as an agent or partner of other

shall borrow any of its funds or deposits, nor shall any such member or employee in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an indorser or surety as to, or in any manner an obligor for investments by the board.

Rates of Contribution

SEC. 65. The normal rates of contribution of members, other than members of the California Highway Patrol, shall be based on sex and age at the nearest birthday at the time of entrance into the retirement system. The normal rates of contribution shall be such as will provide an average annuity at age sixty-five equal to one one-hundred fortieth of the final compensation of members, according to the tables adopted by the board, for each year of service rendered after entering the system. Nothing in this section shall prevent the adoption of one schedule of rates for males and one schedule for females.

[Amended, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 806.]

SEC. 65a. The normal rates of contribution of each member, who is also a member of the California Highway Patrol, shall be based on his age at July 1, 1935, or at his later entrance into the retirement system, and his age when he entered highway patrol service, both ages being taken to the next lower completed quarter year. The age at entrance into the highway patrol service, if said entrance was prior to July 1, 1935, shall be determined by deducting the total of such service credited to the member at July 1, 1935, from his age at that date. The normal rates of contribution of each such member who entered highway patrol service at or below age forty-five shall be such as, on the average for such member, if his service on full salary be uninterrupted and when accumulated with regular interest; added to the equal accumulated contributions of the State and applied according to the tables adopted by the board will provide a retirement allowance upon retirement for service at the age of sixty years, or upon completion of twenty years of service at an age higher than sixty years, equal to one-half of his final compensation, less that part of the retirement allowance set forth in section 83a, which is to be provided by contributions of the State on account of service rendered prior to January 1, 1932, if such member affirmatively exercises the option in section 65d; otherwise, less a pension calculated in the same manner as the pension in section 83a, but on the basis of highway patrol service rendered by him prior to July 1, 1935. If such member entered highway patrol service at an age greater than forty-five years, then his normal rate of contribution shall be such as will provide an average annuity at age sixty-five equal to one-eightieth of his final compensation, according to tables adopted by the board, for each year of service after July 1, 1935, or after entrance into the retirement system if he affirmatively exercises the option in section 65d. The normal rate of contribution of any member who received credit for service rendered as a member of the highway patrol of a county in California, shall be adjusted in such manner as may be necessary to comply with this section.

[Added, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 858.]

SEC. 65b. If a member ceases to be a member of the California Highway Patrol and continues to be a member of the retirement system in a different employment status, or if the reverse be true, then the accumulated contributions standing to his credit or redeposited by him shall remain in his individual account, and the rate of his contribution thereafter shall be the normal rate provided herein for persons in his new group or class of employment and at his age when he first became a member, subject to section 76 hereof in the event he did not redeposit accumulated contributions withdrawn from the system.

[Added, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 806.]

SEC. 65c. The Board of Administration shall adopt normal rates of contribution of members to comply with the provisions of sections 65 and 65a hereof, and said rates shall remain in full force and effect until revised by said board as provided in section 51 hereof.

The actual amount of annuity receivable by any member upon retirement shall be the actuarial equivalent of his accumulated contributions, as provided in sections 81 and 87.

[Added, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 806.]

SEC. 65d. The rates of contribution provided for in section 65c for members of the California Highway Patrol shall apply on and after July 1, 1935. Each of such members, however, shall have the option, to be exercised on or before December 31, 1937, of contributing a sum sufficient to make the amount of the accumulated contributions standing to his credit on that date the same as such amount would have been had he been contributing at the rate, from and after the effective date of his membership in the retirement system, which would have applied to him at such effective date if said rates for the highway patrol had been then in effect. If such option is affirmatively exercised, then the rate of contribution for such member on and after July 1, 1935, shall be based on his age at such effective date and his age at the date of entrance into highway patrol service.

[Added, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 858.]

SEC. 66. The normal rate of contribution established for age sixty-four shall be the rate for any member who has attained a greater age before entrance into the retirement system. In like manner the normal rate of contribution established for age sixteen shall be the rate for any member who enters the retirement system at a lesser age.

Normal Contribution

SEC. 67. The Board of Administration shall certify to the head of each office or department of the State and to the comptroller of the university the normal rate of contribution as provided in this act for each member in such office, department, or the university respectively. The head of each office or department of the State shall apply such rate of contribution to so much of the compensation of each member as does not exceed four hundred sixteen dollars and sixty-six cents per month and shall certify to the State Controller on each and every pay roll the amount to be contributed and shall furnish immediately to the

Board of Administration a copy of each and every such pay roll; and each such amount shall be deducted by the head of each office or department and shall be remitted to the board. The comptroller of the university shall apply the rate of contribution certified to him by the board to so much of the compensation of each member employed by the university as does not exceed four hundred sixteen dollars and sixty-six cents per month, and the contributions so determined shall be deducted by the comptroller of the university from the compensation of each such member; each such amount shall be remitted to the board and the comptroller of the university shall furnish to the board a copy of each and every salary roll and pay roll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by such payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

[Amended, Statutes 1937, Chapter 806.]

Additional Contribution

SEC. 68. Subject to the rules and regulations to be established and promulgated by the Board of Administration, any member may elect to contribute at rates in excess of those provided for in section 65 of this act, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the State any additional financial obligation. The provisions of section 67, next preceding, shall apply also to additional contributions. The board, upon application, shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contributions.

[Amended, Statutes 1933, Chapter 473.]

SECS. 69, 70, 71, 72, 73 and 74. [Repealed, Statutes 1933, Chapter 473. The intent of these sections is included in sections 108, 109 and 109a as amended by Chapter 473, Statutes of 1933.]

Refund of Contribution

SEC. 75. Should the State service of a member be discontinued otherwise than by death or retirement, he shall, six months after the date of discontinuance, be paid such part of his accumulated contributions as he demands, except that if the member is credited with less than twenty years of State service and, in the opinion of the Board of Administration, is permanently separated from State service by reason of such discontinuance, he shall be paid forthwith all of his accumulated contributions. The board may, in its discretion, withhold for not more than one year after a member last rendered State service all or part of his accumulated normal contributions if after a previous discontinuance of State service he withdrew all or a part of his accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 76.

[Amended, Statutes 1935, Chapter 152.]

Redeposit of Withdrawn Contributions

SEC. 76. Any member may redeposit in the retirement fund, in one sum or in not to exceed six monthly or twelve semimonthly payments, an amount equal to that which he withdrew therefrom at the last termination of his membership. If a member, upon reentering the retirement system after a termination of his membership, does not make such redeposit, he shall reenter as a new member without credit for any service and the rate of his contribution for future years shall be the normal rate provided for in this act at his age of reentrance; otherwise his rate of contribution for future years shall be the same as his rate prior to the last termination of his membership, and his membership shall be the same as if unbroken by such last termination.

[Amended, Statutes 1937, Chapter 806.]

SEC. 77. Retirement of a member for service shall be made by the Board of Administration as follows:

Compulsory Service Retirement

SEC. 78. From and after January 1, 1933, until January 1, 1937, every member shall be retired on the first day of the calendar month next succeeding that in which he attains the age of seventy-five years. On or after January 1, 1937, every member who is also a member of the California Highway Patrol, and who at that time has attained the age of sixty-five years shall be retired forthwith, and thereafter every such member must be retired on the first day of the calendar month next succeeding that in which he attains the age of sixty-five years. On and after January 1, 1937, every other member who at that time has attained the age of seventy years shall be retired forthwith, and thereafter every such other member must be retired on the first day of the calendar month next succeeding that in which he attains the age of seventy years.

[Amended, Statutes 1935, Chapter 850.]

Voluntary Service Retirement

SEC. 79. Upon attaining the age of sixty or more years and completing twenty years of continuous State service credited under this act, among which must be included one year of service after becoming a member of the retirement system, any member may be retired upon written application to the board.

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1937, Chapter 806.]

Service Retirement Allowance

SEC. 80. A member upon retirement from service, is entitled to receive a service retirement allowance which shall consist of:

SEC. 81. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement;

SEC. 82. A pension, purchased by the contributions of the State, equal to that portion of the annuity purchased by the accumulated normal contributions of the member; and

SEC. 83. An additional pension for members other than members of the California Highway Patrol, purchased by the contributions of

the State. Such additional pension shall be equal to one-seventieth of the average annual compensation earnable by him during the three years ending December 31, 1931, multiplied by the number of years of prior service credited to him, except that if a member retires before attaining the age of sixty-five years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty-five, will purchase at the actual age of retirement.

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1935, Chapter 850.]

SEC. 83a. An additional pension for members who are also members of the California Highway Patrol, purchased by contributions of the State. Such additional pension shall be the same percentage of his final compensation, regardless of his age at retirement, for each year of highway patrol service rendered by him prior to January 1, 1932, as the contributions of the member and the State are calculated to provide upon retirement for service at sixty years of age or upon completion of twenty years of service at an age higher than sixty years or upon retirement with less than twenty years of service at age sixty-five, for each year of such service after said date.

[Added, Statutes 1935, Chapter 850.]

[Amended, Statutes 1935, Chapter 858.]

Minimum Guarantee

SEC. 84. When a member enters the retirement system with credit for prior service, and retires after attaining the age of seventy years, if his final compensation was such that one-half thereof is in excess of the total of his pension, annuity, and additional pension for prior service, a second additional pension for prior service sufficient to cause his retirement allowance to amount to one-half of such final compensation shall be paid him on account of prior service, but in no event shall a greater second additional pension be paid than will cause the total retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, to amount to the sum of four hundred eighty dollars per year.

SEC. 84a. This section repealed by Chapter 858, Statutes of 1937.

Disability Retirement

SEC. 85. Any member who is also a member of the California Highway Patrol shall be retired for disability regardless of age or amount of service, if incapacitated for the performance of duty as the result of an injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the Board of Administration, but the Industrial Accident Commission shall determine, in the same manner as for all other State employees, whether such incapacity is the result of injury or disease arising out of and in the course of employment. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired regardless of age but only after ten years of service to the State.

[Amended, Statutes 1935, Chapter 850.]

SEC. 85a. Subject to the requirements as to service and cause of disability stated in section 85 and upon the application of a member or upon the application of the head of the office or department in which such member is or was last employed, or any other person on behalf of such member, while such member is in State service, within four months after such member's discontinuance of State service, or while such member continuously, from the date of discontinuance of State service to the time of the application or motion, is physically or mentally incapacitated to perform his duties, may apply for, or the board upon its own motion may order, a medical examination to determine the existence of such incapacity. Upon the receipt of such application, the board shall order such medical examination. If the medical examination shows to the satisfaction of the board, that the member is permanently incapacitated physically or mentally for the performance of his duties in the State service, the board shall forthwith retire the member for disability. The board shall secure such medical service and advice as is necessary to carry out the purpose of this section and of sections 90 to 94, inclusive, of this act, and shall pay for such medical services and advice such compensation as the board deems reasonable.

[Added, Statutes 1935, Chapter 850.]

Disability Retirement Allowance

SEC. 86. Upon retirement for disability, a member who is not a member of the California Highway Patrol and who has attained the age of sixty years shall receive a service retirement allowance as provided in sections 81 to 83a, inclusive, of this act. Upon retirement of a member, who is also a member of the said highway patrol, for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum of his final compensation or, if he qualified as to age and service for service retirement under section 79, then such member shall receive a service retirement allowance as provided in sections 81 to 83, both inclusive. The allowance shall be provided by the contributions of the member and of the State in the same manner but not in the same amounts as is set forth in sections 87 and 88 for other disability retirement. Every other member retired for disability shall receive a retirement allowance which shall consist of:

[Amended, Statutes 1935, Chapter 850.]

SEC. 87. An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

SEC. 88. If, in the opinion of the Board of Administration, such disability is not due to intemperance, wilful misconduct or violation of law on the part of the member, a pension purchased by the contributions of the State, which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to (a) ninety per cent of one-seventieth of his final compensation multiplied by the number of years of service credited to him, if such disability retirement allowance exceed one-fourth of his final compensation; otherwise, (b) ninety per cent of one-seventieth of his final compensation multiplied by the number of years of service

which would be creditable to him were his service to continue until attainment by him of age sixty-five, but in such case the retirement allowance shall not exceed one-fourth of such final compensation. In no event, however, shall the pension purchased by the contributions of the State be more than sufficient to make the disability retirement allowance, exclusive of the annuity provided by accumulated additional contributions, exceed the service retirement allowance, exclusive of any annuity purchased by accumulated additional contributions, receivable by the member should he retire at the lowest age at which he would be eligible for service retirement.

[Amended, Statutes 1933, Chapter 473.]

SEC. 89. If, in the opinion of the board, the disability is due to intemperance, wilful misconduct or violation of law, on the part of the member, and the annuity to which said member is entitled under sections 86 to 88, inclusive, of this act, is less than two hundred forty dollars per year, the Board of Administration, in its discretion, may pay to said member, in one lump sum and in lieu of said annuity, his accumulated contributions.

Safeguards on Disability Retirement

SEC. 90. The Board of Administration may, at its pleasure require any disability beneficiary, under the age of sixty, to undergo medical examination. Such examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of said beneficiary or other place mutually agreed upon. Upon the basis of such examination the board shall determine whether said disability beneficiary is still incapacitated, physically or mentally, for service in the office or department of the State where he was employed and in the position held by him when retired for disability. If the Board of Administration determines that said beneficiary is not so incapacitated, his retirement allowance shall be canceled forthwith, and he shall be reinstated to the position held by him when retired for disability.

SEC. 91. Should a disability beneficiary reenter the State service and be eligible for membership in the retirement system in accordance with section 26 of this act, his retirement allowance shall be canceled and he shall immediately become a member of the retirement system, his rate of contribution for future years being that established for his age at the time of such reentry. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but such amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability. Such member shall receive credit for prior service in the same manner as though he had never been retired for disability.

[Amended, Statutes 1933, Chapter 473.]

SEC. 92. Should a disability beneficiary, prior to attaining age sixty, engage in a gainful occupation not in the State service or should he reenter the State service in a capacity ineligible for membership in the retirement system, the Board of Administration shall reduce the amount of his retirement allowance to an amount which, when added

to the compensation earned by him in such occupation, shall not exceed the amount of the final compensation on the basis of which his retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the board may further alter his retirement allowance to an amount which shall not exceed the amount upon which he was originally retired, but which, subject to such limitation, shall equal, when added to the compensation earned by him, the amount of his final compensation on the basis of which his retirement allowance was determined. When such a disability beneficiary reaches age sixty, his retirement allowance shall be made equal to the amount upon which he was originally retired, and shall not again be modified for any cause.

SEC. 93. Should any disability beneficiary under age sixty refuse to submit to medical examination his pension may be discontinued until his withdrawal of such refusal, and should such refusal continue for one year his retirement allowance may be canceled.

SEC. 94. Should the retirement allowance of any disability beneficiary be canceled for any cause other than reentrance of the State service he shall be paid his accumulated contributions, less the annuity payments made to him.

Optional Modification of Retirement Allowance

SEC. 95. Until the first payment on account of any retirement allowance is made, and subject to the condition that, if he die after retirement and within thirty days from the date upon which his election is received at the office of the retirement system in Sacramento, then said election is void and of no effect, and the death shall be considered as that of a member before retirement, a member or a beneficiary may elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options.

[Amended. Statutes 1937, Chapter 806.]

SEC. 96. Option 1. If he dies before he receives in annuity payments provided for in section 81 and section 87 of this act, the amount of his accumulated contributions as it stood at his retirement, the balance of such accumulated contributions shall be paid to his estate or to such person, having an insurable interest in his life, as he shall nominate by written designation duly executed and filed with the Board of Administration;

SEC. 97. Option 2. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the Board of Administration at the time of his retirement;

SEC. 98. Option 3. Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the Board of Administration at the time of his retirement;

SEC. 99. Option 4. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nomi-

nates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the Board of Administration.

Death Benefit

SEC. 100. Upon the death before retirement of a member while in the State service, or within four months after the discontinuance of State service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of State service, the retirement system shall be liable for a death benefit, which if an amount is due under clause (3) next following, and if there is a surviving wife or surviving children, shall be paid in monthly installments and to the surviving wife and children as prescribed therein, otherwise such death benefit shall be paid to his estate, or to such person having an insurable interest in his life as he has nominated by written designation duly executed and filed with the retirement board. Such death benefit shall consist of:

(1) His accumulated contributions, and in addition thereto,

(2) An amount, provided from contributions by the State, which shall be equal to one-twelfth of the annual compensation earnable by the deceased during the twelve months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty per centum of such compensation.

If such member is a member of the California Highway Patrol and if, as determined by the Industrial Accident Commission in the same manner as for all other State employees, death shall be the result of injury or disease arising out of and in the course of employment, then in addition to the amounts set forth in clauses (1) and (2), there shall be paid

(3) An amount sufficient, when added to the amounts provided in the next preceding paragraphs (1) and (2), to provide, when applied according to tables adopted by the board, a monthly death benefit allowance, equal to one-half of the compensation earnable by such member during the five years immediately preceding his death, to be paid to the surviving wife to whom said member was married prior to sustaining the said injury, to continue as long as she shall live or until her marriage; or if there is no widow, or if the widow dies before all children of such deceased member attain the age of eighteen years, then to his child or children under said age collectively, to continue until every child dies or attains said age. If payment of the allowance is stopped because of remarriage of the widow or attainment of the age of eighteen years by a child, before the sum of the monthly payment made equals the sum of the amounts provided in the next preceding clauses (1) and (2), then an amount equal to the difference between said sums shall be paid in one amount to the remarried widow, or if there is no widow, to the surviving children of the deceased member, share and share alike.

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1933, Chapter 850.]

SEC. 100a. A person, while a member or after retirement, shall have the right to revoke the nomination of a beneficiary made by him

under the retirement system, and to nominate a beneficiary in lieu thereof, all by written designation duly executed and filed with the retirement board, provided that this right shall not extend to beneficiaries nominated under options 2, 3, and 4 in sections 97, 98 and 99 of this act, nor shall it extend to dependents designated as beneficiaries by this act to receive benefits payable on account of death or disability arising out of and in the course of employment.

[Added, Statutes 1935, Chapter 850.]

SEC. 100b. The board of administration, in the event that the whereabouts of the nominated beneficiary can not be determined, or in the event that the nominated beneficiary be the estate of the deceased person, may pay to the undertaker who conducted the funeral in its discretion all or a portion of the amount payable under this section 100, but not to exceed the funeral expenses of such deceased person as evidenced by the sworn itemized statement of the undertaker and by such other documents as the board may require. Said payment shall be full and complete discharge and acquittance of the amount payable under this section up to the amount so paid, anything in this act to the contrary notwithstanding.

[Added, Statutes 1935, Chapter 850.]

Retirement Benefits Not Modified by Compensation Insurance Except for Highway Patrol

SEC. 101. No modification of the benefits provided herein shall be made on account of any amounts payable to a beneficiary, as defined herein, under the Workmen's Compensation, Insurance and Safety Act of the State of California, except that the portion of any retirement allowance or death allowance which is provided by contributions of the State and which is payable by the retirement system because of the death or retirement of any member of the California Highway Patrol, as a result of injury or illness arising out of and in the course of employment, shall be reduced in the manner hereinafter described, by the amount of any benefits, other than medical benefits, payable to or on account of such member under the Workmen's Compensation, Insurance and Safety Act of the State of California, because of his death or the disability resulting in his retirement.

If said benefits under said Compensation Act shall run concurrently with said allowance hereunder and shall be due the beneficiary in payments which are equal to or less than said portion of the retirement allowance or death allowance, then said portion shall be reduced each month by the amount of said benefits so due during said month, and the beneficiary shall have no more right to such reduction than if the retirement system had never existed.

If said benefits under said Compensation Act shall run concurrently with the allowance hereunder and shall be due to the beneficiary in payments which are greater than said portion of the retirement allowance or death allowance, then payment of said portion shall be withheld until the total of the amounts so withheld shall equal the total of said benefits paid, and the beneficiary shall have no more right to such amounts withheld than if the retirement system had never existed.

It is the purpose of the preceding paragraphs of this section to reduce the portion of the retirement or death allowance payable from

the retirement fund and which is provided by contributions of the State, by the amount of benefits, other than medical benefits, due to the beneficiary concurrently with said portion, under said Compensation Act, and the payment before due date by the commutation through compromise or otherwise of such benefits shall not prevent the reduction of said portion, as provided in this section, in the amounts which would have been payable concurrently with the retirement allowance in the absence of such commutation.

If any benefits, other than medical benefits, shall have been paid under said Compensation Act because of a permanent disability concurrently with payments of wages or salary, to said beneficiary, then payment of said portion of the retirement allowance or death allowance shall be withheld until the total of the amounts so withheld shall equal the total of such benefits paid because of the permanent disability, and the beneficiary shall have no more right to such amounts withheld than if the retirement system had never existed. Said benefits which are payable for time during which salary is not paid and prior to the effective date of the retirement or death allowance, shall not be considered hereunder.

If an injury, known to result in the retirement of and/or the death of a member of California Highway Patrol, is the proximate consequence of the act of a person other than his employer, the retirement system shall have the right to recover from said person an amount which shall be the actuarial equivalent of the benefits for which it shall be liable because of said injury and/or death, and said right shall be determined under the provisions of section 26 of the Workmen's Compensation, Insurance and Safety Act. Said retirement system may join with the employer and/or its compensation insurance carrier in any proceeding under said section, and any amount recovered by any of the parties shall be applied first on the amounts which the employer or its insurance carrier shall have paid or become obligated to pay, and second, on the amounts which the retirement system shall have paid or become obligated to pay.

Amounts by which retirement and death allowances are reduced and amounts recovered from third persons under the provisions of this section shall be paid by the retirement system to the motor vehicle fund.

[Amended, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 806.]

Monthly Payment of Allowance

SEC. 102. A pension, an annuity or retirement allowance granted under the provisions of this act shall be payable in equal monthly installments but a smaller pro rata amount may be paid for part of a month when the pension, annuity or retirement allowance begins after the first day of the month or ends before the last day of the month.

Retirement Fund Exempt from Execution, Garnishment, Attachment, or Assignment

SEC. 103. The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension,

annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

Estimate of Age and Service

SEC. 104. If it shall be impracticable for the Board of Administration to determine from the records the length of service, the compensation or the age of any member, or if any member refuses or fails to give the board a statement of his State service, his compensation or his age, the said board may estimate, for the purposes of this act, such length of service, compensation or age.

[Amended, Statutes 1933, Chapter 473.]

State Can Not Pay for Service After Retirement

SEC. 105. No person who has been retired for service of disability and who receives a retirement allowance under the retirement system shall be paid for any service rendered by him to the State after the date of his retirement.

SEC. 106. If any section, subsection, sentence, clause or phrase of this act, is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The Legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

SEC. 107. All acts and parts of acts in so far as they conflict with this act are hereby repealed.

Appropriation

SEC. 108. From and after the date the system created by this act takes effect, out of any moneys in the State treasury not otherwise appropriated, there shall be paid monthly into the "State employees' retirement fund" a sum equal to three and seventy-five one-hundredths per centum of the total compensation paid members of the retirement system whose compensation is paid from the general fund of the State. The Board of Administration shall certify to the State Controller at the end of each month the total amount of compensation paid such members of the retirement system, and the State Controller shall thereupon transfer three and seventy-five one-hundredths per centum of this amount from the general fund of the State to the "State employees' retirement fund." For the purposes of this section and section 109, compensation paid from the vocational education fund or the vocational rehabilitation fund or any other fund received, in whole or in part as a donation to the State, with restrictions as to its use which prevent contributions under section 109 hereof, to members of the retirement system as employees of the Department of Education, and compensation paid from the funds of the university to members of the retirement system as employees of the university, shall be considered as paid from the general fund of the State. Contribu-

tions made to the retirement system under this section and the section next following shall be applied by the Board of Administration to meet the State's obligations under the system in the order and amounts as follows: first, in an amount equal during each fiscal year to the liability accruing because of State service rendered during such year and on account of pensions provided for in section 82 and sections 86 to 89, inclusive, such amount to be determined by the actuarial valuation provided for in section 51, as interpreted by the actuary of said board; second, in an amount equal during each fiscal year to the payments made, from contributions by the State, during such year as provided in section 100; third, in an amount equal to the balance of such contributions, on the liabilities accrued on account of prior service benefits granted under sections 83 to 84, inclusive, and sections 86 to 89, inclusive.

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1935, Chapter 152.]

[Amended, Statutes 1937, Chapter 806.]

SEC. 109. In addition to such payments from the general fund, there shall be paid monthly, from and after the date this act takes effect, into the State employees' retirement fund out of the motor vehicle fund a sum equal to nine and twenty one-hundredths per centum of the total compensation paid from said fund to members of the retirement system who also are members of the California Highway Patrol and out of said motor vehicle fund and every other fund directly controlled by the State, out of which the compensation of members is paid, a sum equal to three and seventy-five hundredths per centum of the total compensation paid members, other than members of the said highway patrol, of the retirement system from the said fund. All such payments, whether heretofore or hereafter made are hereby validated and confirmed. The board of administration shall certify to the State Controller at the end of each month the total amount of compensation paid such members of the retirement system from each such fund and the State Controller shall thereupon transfer the percentages as specified in this section, of said total amount from each such fund, respectively, to the "State employees' retirement fund." If any member of the said highway patrol shall affirmatively exercise the option in section 65d, the Controller shall transfer into the said retirement fund from the motor vehicle fund upon certification by the board of administration of the total compensation received by said member for service as a member of the retirement system rendered prior to July 1, 1935, three and ninety one-hundredths per centum of said total compensation. The appropriation made by Chapter 865, Statutes of 1933, shall no longer be held solely for the benefit of the persons designated therein, but shall be applied on the State's liability for benefits based on prior service of all members of the California Highway Patrol. In the event a special fund is created by law from which moneys for the support of the Department of Motor Vehicles are to be paid, all contributions to the State employees' retirement fund for employees of the Department of Motor Vehicles shall be paid from such special fund.

[Amended, Statutes 1933, Chapter 473.]

[Amended, Statutes 1935, Chapter 850.]

[Amended, Statutes 1937, Chapter 858.]

SEC. 109a. All payments of the State into the "State employees' retirement fund," whether made as provided in sections 108 and 109 of this act, or heretofore made as otherwise provided, are hereby made and shall continue to be obligations of the State.

[Added, Statutes 1933, Chapter 473.]

\$416.66 Maximum Salary Considered

SEC. 110. For the purpose of computing the total amounts of compensation of members under the provisions of sections 108 and 109 of this act, the compensation of every member who receives in excess of \$416.66 per month shall be computed as \$416.66 per month.

SEC. 111. With the approval of the Department of Finance, any fund out of which payments are made under the provisions of section 109 of this act may be reimbursed to the extent of such payments by transfer of a sufficient sum for such reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the State Controller the amount or amounts to be thus transferred, the fund or funds from which and to which the transfer is to be made, and if such certificate is approved by the Department of Finance the Controller shall thereupon make the transfer as directed in the certificate.

SEC. 112. Out of any moneys in the State treasury not otherwise appropriated, the sum of thirty-five thousand dollars is hereby appropriated for the support of the Board of Administration. The board may withdraw without at the time furnishing vouchers and itemized statements, a sum not to exceed five hundred dollars to be used as a revolving fund. At the close of the biennium or at any other time upon the demand of the Department of Finance, such sum must be returned to the State treasury.

SEC. 113. This act may be cited as the State Employees' Retirement Law.

[Added, Statutes 1937, Chapter 806.]

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